

**South Bethany****1. Incorporation.**

The inhabitants and property owners of the Town of South Bethany, within the corporate limits as hereinafter defined in this Charter or as extended as hereinafter provided, are hereby constituted and declared to be a body politic incorporated in law and equity as a single family, detached home community, by the corporate name of the "Town of South Bethany, (hereinafter "Town") with power to govern themselves by such ordinances, regulations, resolutions, and rules for municipal purposes as they, through their duly elected officers and agents may deem proper, not in conflict with the provisions of this Charter of government, nor with the Constitution and Laws of the State of Delaware, nor of the United States; and as such shall be able and capable to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts.

The Town shall have perpetual succession and shall succeed to own or possess all property, whether real, personal, or mixed, tangible or intangible, of whatever kind and nature, and all the powers, rights, privileges or immunities now or heretofore belonging to, possessed or enjoyed by the Town of South Bethany previously incorporated at Chapter 78, Volume 67, Laws of Delaware, as amended.

**2. Territorial Limits.**

The present territorial limits of the Town are hereby established and declared to be as follows:

BEGINNING at a point at the mean low water line of the Atlantic Ocean, at a corner of State lands; thence with the mean low water line of the Atlantic Ocean in a northerly direction, a distance of approximately 4,100 feet to the line of the Middlesex Development;

thence, in a west northwest direction with the line of the Middlesex Development to a common corner for Middlesex and South Bethany, and a point on the westerly side of Pine Road;

thence, by and with the westerly side of Pine Road North 08 degrees 23 minutes 19 seconds East, 271.93 feet to a point, said point being a corner of these lands and lands of South Bethany Recreational Association, Inc.

thence, leaving the westerly side of Pine Road, and by and with lands of South Bethany Recreational Association, Inc., the following two (2) courses and distances, North 81 degrees 37 minutes, 31 seconds West, 237.39 feet to a point;

thence, North 08 degrees 20 minutes 11 seconds East, 292.10 feet to a point, said point being a corner of these lands and lands of South Bethany Recreational Association, Inc. and being situate on the south side of Route #361;

thence, by and with Route #361 South 79 degrees 19 minutes 04 seconds West. 126.53 feet to a point; thence, South 84 degrees 14 minutes 46 seconds West, 287.50 feet to a point, said point being a corner of these lands and lands of Sea Colony, Inc.,

thence, leaving said Route #361, and by and with lands of Sea Colony Inc; South 11 degrees 05 minutes 02 seconds West, 526.15 feet to a point, said point being a corner of these lands and lands of Sea Colony, Inc.;

thence, continuing with lands of Sea Colony, Inc., North 69 degrees 33 minutes 48 seconds West, 642.01 feet to a point, said point being situate on the easterly right-of-way of the Assawoman Canal;

thence, continuing with the same bearing the distance necessary to extend the line to the centerline of the Assawoman Canal;

thence, southeasterly along the center of the Assawoman Canal to the Jefferson Creek Canal to a point where said low water line intersects the State lands;

thence, by and with the State lands, South 60 degrees 45 minutes 00 seconds East, to the point of beginning.

The above boundaries having most recently been established by an Act to Reincorporate the Town of South Bethany, Chapter 78, Volume 67, Laws of Delaware, dated July 7, 1989.

The Town Council may, at any time hereafter, cause a survey and plot to be made of said Town, and the said plot or any supplement thereto, when made and approved by said Town Council, signed by the Mayor, and attested to by the Secretary, with the Town Seal affixed, upon being recorded in the Office of the Recorder of Deeds in and for Sussex County, State of Delaware, or the record thereof, or a duly certified copy of said record, shall be evidence in all courts of law and equity in this State.

**3. Annexation of Territory.**

The Town shall have power to annex any additional contiguous territory adjoining the corporate limits of the Town as hereinbefore set forth or as hereafter extended pursuant to the procedure set forth in this Section, and to apply to all such

additional territory all laws, ordinances, resolutions, and policies in force in the Town so far as they may be locally applicable.

3.1 Initiation of Annexation Proceedings.

3.1.1 By Petition of the Property Owners. Any property owner(s) holding record fee title to real property in territory contiguous (subject to Sec. 3.2.11) to the then existing corporate limits of the Town may petition the Town Council to annex that certain territory in which they own property. Such petition shall be in writing, duly executed and acknowledged by each petitioner, shall describe with reasonable certainty the territory proposed for annexation, indicate the property owned by each petitioner therein and state the reasons for the requested annexation. The Town Council may, within ninety (90) days following the filing of such petition in the Town Office, vote to accept such petition and proceed as hereinafter provided, or to reject such petition. A petition not so accepted within said ninety (90) days shall be null and void. For purposes of this Sec. 3.1.1 and Sec. 3.1.2, "territory contiguous to the then existing corporate limits of the Town" shall include both real property which is proposed to be included in the annexation and real property which would be contiguous under Sec. 3.2.11.

3.1.2 By Resolution of the Town Council. The Town Council may, at any time, adopt a resolution proposing the annexation of any territory contiguous to the Town. Such resolution shall describe, with reasonable certainty, the territory proposed to be annexed and state the reasons for the proposed annexation. Upon adoption of such resolution, the Town Council shall proceed as hereinafter provided.

3.2 Annexation Procedure. Whether annexation is proposed by petition of the property owners or by resolution of the Town Council, the following procedure shall be complied with:

3.2.1 Resolution and Notice. The Town Council shall adopt a resolution notifying the property owners and the residents of both the Town and the territory proposed to be annexed, that the Town proposes to annex certain territory which adjoins its then corporate limits. The resolution shall contain a description of the territory proposed to be annexed and shall fix a time and place for a public hearing on the subject of the proposed annexation. The resolution setting forth the information shall be published at least once in at least two (2) newspapers which shall be of general circulation in the Town and in the territory proposed to be annexed. Such publication shall appear not less than thirty (30) days nor more than sixty (60) days before the date set for the hearing. In the event that such publications do not appear on the same date, the date of the last publication shall control. Such notice shall be in bold print or bordered in black in such manner as to call attention thereto.

In addition to publication as herein provided, the Town Council shall, not less than thirty (30) days nor more than sixty (60) days before the date of such hearing: (1) cause a public notice, containing the full text of the resolution to be posted in at least five (5) public places in the Town and in at least one (1) place, viewable to the public, in the territory proposed to be annexed; and (2) send a copy of such notice, certified mail, to the owners of record of the lands proposed to be included in the annexation at their addresses as shown on the public tax records. Written notice to one co-owner shall be notice to all.

3.2.2 Public Hearing. At the time, date, and place specified in the resolution proposing annexation (or at any revised date, time, or place if duly noticed as provided in Sec. 3.2.1) the Town Council shall sit to hear comments and opinion from any concerned party regarding the proposed annexation. Such public hearing shall be for the purpose of obtaining public opinion and legislative fact finding.

3.2.3 Resolution Ordering Special Election. Following the public hearing, but in no event later than sixty (60) days thereafter, the Town Council may pass a resolution ordering a special election to be held not less than (30) days, nor more than sixty (60) days after the date of such resolution proposing the special election. The passage of this resolution shall be considered the determination of the Town Council to proceed with the matter of the proposed annexation, provided, however, that if the annual municipal election is to be held within one hundred twenty (120) days of the date of the resolution adopted by the Town Council pursuant to this Section, the election on the proposed annexation may be held in conjunction with the annual municipal election and all provisions hereof shall be construed and applied accordingly.

3.2.4 Notice of Special Election. Notice of the time and place of said special election shall be published not less than thirty (30) days nor more than sixty (60) days before the date set for said special election. Notice shall be published at least once in two (2) newspapers which shall be of general circulation in the Town and in the territory proposed to be annexed. In the event that such publications do not appear on the same date, the date of the last publication shall control. Such notice shall be in bold print or bordered in black in such manner as to call attention thereto. In addition to such publication as herein provided, the Town Council shall, not less than thirty (30) days nor more than sixty (60) days before the date of such special election,

cause a public notice containing the full text of the resolution proposing such special election to be posted in at least five (5) public places in the Town and in at least one (1) place, viewable to the public, in the territory proposed to be annexed.

**3.2.5 Those Entitled to Vote.**

- (a) At such special election, any person who is lawfully entitled to vote at the annual Municipal election, if it were being held on that day, and any natural person who would be so entitled if the area proposed to be annexed were already included in the Town, shall be entitled to one (1) vote. For purposes of this section, "lawfully entitled to vote" shall include "registered to vote" if registration is required; but all natural persons in the area to be annexed shall be deemed to be registered if they would otherwise be entitled to vote. In addition, each legal entity (other than a natural person) owning property in its own name in the territory proposed to be annexed shall be entitled to one (1) vote.
- (b) These provisions shall be construed so as to permit "one person, one vote". Should a voter be entitled to vote by virtue of both residence and ownership of property, that voter shall be entitled to only one (1) vote. Should a voter be entitled to vote by ownership of two (2) or more properties, that voter shall be entitled to only one (1) vote.
- (c) Any legal entity (other than a natural person) entitled to vote must cast its vote by a duly executed and acknowledged power of attorney. Such power of attorney shall be surrendered to the Board of Special Election which shall be filed with the Town Manager. Such power of attorney so filed shall constitute conclusive evidence of the right of said person to vote in the special election on behalf of the legal entity granting the power.

**3.2.6 Conduct of the Special Election.**

- (a) The Town Council may cause voting machines, electronic voting systems, or paper ballots to be used in the special election, as required by law, the form of ballot to be printed as follows:

For the proposed annexation. \_\_\_\_\_

Against the proposed annexation. \_\_\_\_\_

The Mayor shall appoint three (3) natural persons to act as a Board of Special Election. One (1) of the said persons so appointed shall be designated the Presiding Officer. The Board of Special Election shall be the sole and final judge of the legality of the votes offered at such special election. It shall keep a true and accurate list of all natural persons and other legal entities voting. Voting shall be conducted in a public place as designated by the resolution calling the special election. The polling place shall be open for a minimum of six (6) consecutive hours as set by the Town Council, on the date set for the special election. All persons in the polling place at the time of the closing of the polls shall be permitted to vote, even though such votes are not cast until after the time for the closing of the polls. All ballots cast by those persons or other legal entities authorized to vote in the territory proposed to be annexed shall be deposited in designated ballot box(es) or cast in designated voting machine(s), and all ballots cast by those persons or other legal entities who are authorized to vote in the Town shall be deposited in other designated ballot box(es) or cast in other designated voting machine(s).

- (b) Any qualified voter may vote by absentee ballots pursuant to rules promulgated by the Town Council; and such rules shall be consistent with rules governing absentee voting for Town officials promulgated pursuant to Sec. 6.4 (f).

**3.2.7 Results of Special Election.**

- (a) In order for the territory proposed to be annexed to be considered annexed, a majority of the votes cast both from the Town and from the territory proposed to be annexed must have been cast in favor of the proposed annexation.
- (b) In the event that the special election results in an unfavorable vote for the annexation in either or both the Town and the territory proposed to be annexed, no part of the territory proposed to be annexed shall again be considered for annexation for a period of at least one (1) year from the date of the special election.
- (c) If the vote in both the Town and in the territory proposed to be annexed is favorable to the proposed annexation, the Town Council shall at its first meeting following the special election adopt a resolution annexing the said territory and including it within the limits of the Town. Upon the adoption of the resolution of annexation, a copy thereof, signed by the Mayor and certified by

the Secretary, with the Town Seal affixed, together with a plot of the area annexed, shall forthwith be filed for recording in the Office of the Recorder of Deeds in and for Sussex County, Delaware. The territory so annexed shall be considered to be a part of the Town from the moment the resolution of annexation is adopted by the Town Council. Failure to record the resolution, or the plot accompanying same, shall not invalidate the annexation, but such recording may be enforced by writ of mandamus or mandatory injunction.

3.2.8 Annexation Agreements. Notwithstanding any provision herein to the contrary, where, pursuant to Sec. 3.1.1 of this Charter, annexation proceedings are initiated by a property owner(s) holding record title to real property in territory contiguous to the then existing corporate limits of the Town, such petition may be made contingent upon an annexation agreement with the Town which agreement may address any matters which would be relevant to the subject lands, if annexed. By way of example and not in limitation, such agreement may address zoning, subdivision approval, tax relief, public utilities, and public improvements. In the event the Town Council approves such an agreement and votes to accept a petition under Sec. 3.1.1 of this Charter, such annexation agreement shall be deemed a material part of the annexation and shall be included in all subsequent steps of the annexation procedure:

- (1) the resolutions and notices adopted by the Town Council pursuant to Sec. 3.2.1, Sec. 3.2.3, Sec. 3.2.4 and Sec. 3.2.10 shall recite that the proposed annexation includes and is subject to an annexation agreement, shall briefly summarize its terms, and shall state that copies of the agreement are available upon request at the Town Office;
- (2) if the results of the election are favorable to the proposed annexation as provided by Sec. 3.2.7(a) of this Charter, the resolution annexing the territory (as provided by Sec. 3.2.7(c)) shall recite that the annexation is subject to an annexation agreement and shall incorporate the terms of such agreement by specific reference; and all affected parties shall be bound to honor the provision of such agreement. No agreement made at the time of annexation under this Sec. 3.2.8 shall extend beyond seven (7) years from the date the property is annexed into the Town; and such agreement shall be null, void, and unenforceable after the expiration of said seven (7) years.

An annexation agreement may be modified or amended by mutual agreement of the petitioner and the Town Council at any time prior to the resolution ordering the special election pursuant to Sec. 3.2.3 of this Charter, but any material modification or amendment shall be deemed to be: (1) the withdrawal of the original petition, and (2) the filing of a new petition under Sec. 3.1.1.

3.2.9 Property Owned by the State of Delaware:

Highways, Streets, Roads, Alleys and Waterways.

Real property owned by the State of Delaware may be annexed by the Town without the State casting a vote in the special election, provided the State agency having control and supervision thereof does not notify the Town, in writing, of its objection to such annexation within thirty (30) days after receiving written notice of the resolution proposing the annexation, as provided in Sec. 3.2.3.

3.2.10 Limitations. No action contesting the annexation of any territory under this Section shall be brought after the expiration of sixty (60) days from the publication of a notice in at least two (2) newspapers, both of general circulation in the Town and in the territory annexed, which notice shall contain the following information:

- (a) notice that the Town has annexed such territory and a description thereof;
- (b) notice that any person or other legal entity desiring to challenge such annexation must bring his/her/its action within sixty (60) days from the date of publication of such notice or forever be barred from doing so. Such notice shall be in bold print or bordered in black in such manner as to call attention thereto. In addition to publication as herein provided, the Town Council shall cause a public notice, containing the information set out in subparagraph (a) and (b) above (using date of posting for date of "publication") to be posted in at least five (5) public places in the Town and in at least one (1) place, viewable to the public in the territory to be annexed. In the event the publication and/or the posting dates do not appear on the same date, the date of the last publication or posting shall control.

3.2.11 Contiguity.

- (a) Contiguity with the Town's existing corporate limits, or with other territory which is itself contiguous with the Town's existing corporate limits, shall not be deemed interrupted by the existence of any highway, street, road, alley, or waterway (including but not limited to ponds, creeks, canals, lagoons, wetlands, and ditches) which passes through, or lies within, the territory to be annexed.

- (b) Territory that is separated from the corporate limits of the Town by federal or state-owned roads, lands, or waterways shall, nevertheless, be considered contiguous territory for the purposes of this Sec.

**4. Powers of the Town.**

- 4.1 General. The Town shall have and enjoy all the powers possible for a municipal corporation to have under the Constitution and Laws of the United States and the State of Delaware, as fully and completely as though they were specifically enumerated in this Charter.
- 4.2 Enumeration of Powers. Not by way of limitation upon the scope of the powers vested in the Town Council to exercise all powers delegated by this Charter to the Town (except as may expressly appear herein to the contrary), but rather by way of enumeration and for purposes of clarity, the Town Council is vested by this Charter with the following powers, that is to say, the Town Council:
  - 4.2.1 may have and use a corporate seal which may be altered, changed, or renewed at any time.
  - 4.2.2 may hold and acquire by gift, negotiation and purchase, devise, lease, or condemnation property both real (improved or unimproved) and personal, or mixed, within or without the boundaries of the Town, in fee simple or lesser estate or interest, necessary or desirable for any municipal or public purpose, including but not limited to providing sites for constructing, improving, extending, altering or demolishing:
    - (a) public buildings;
    - (b) parks;
    - (c) streets, squares, lanes, alleys, and
    - (d) sewer systems, including but not limited to sewage lines, conduits, sewage disposal or treatment plants, and all appurtenances thereto;
    - (e) water systems, including but not limited to, water plants, wells, lines, conduits and all appurtenances thereto;
    - (f) recreational facilities, including but not limited to public bathing beaches, gymnasiums, athletic fields, bicycle paths, tennis, basketball, or paddle ball courts and all appurtenances thereto;
    - (g) adequate municipal services for persons and other legal entities residing either within or beyond the corporate limits of the Town, to their mutual benefit and advantage, upon such terms, charges, and conditions as the Town Council may determine and approve;
    - (h) slum clearance and redevelopment, urban renewal, revitalization or rehabilitation of blighted areas or removal of dangerous buildings;
    - (i) protection services for the citizens of the Town to include, but not limited to, police, fire, rescue and paramedic support.
  - 4.2.3 may sell, grant, alienate, lease, mortgage, manage, hold and control such property as the interests of the Town may require except as prohibited by the Constitution and Laws of the United States and the State of Delaware or as restricted by this Charter;
  - 4.2.4 may pay for the acquisition, construction, improvement, repair, extension, alteration or demolition of any Town property (real, personal or mixed) from the general fund of the Town, from the proceeds of any bond issue which may be authorized and sold for any of the purposes for which lands and premises are authorized by this Charter to be acquired, and/or from the proceeds of any grant or loan made to the Town by any governmental entity of the United States or the State of Delaware where the proceeds of the grant or loan are for the purposes for which lands and premises are authorized by this Charter to be acquired;
  - 4.2.5 may acquire, build, erect, and maintain buildings and facilities necessary or required for housing and equipping the offices of the Town;
  - 4.2.6 may purchase, take and hold real and personal property when sold for any delinquent tax, assessment, water rent, electric bill, gas bill, license fee, tapping fee, charge growing out of abatement of nuisances, or other charge due the Town and sell the same;
  - 4.2.7 may:
    - (a) ascertain, locate, lay out, establish, open, change, alter, widen, abandon, regulate the use and enjoyment of, prevent or remove any obstruction of, level, grade, flag, dress, macadamize, pave, improve, dredge, erect, remove, repair and replace any new or present street, highway, road, alley, waterway, park, crosswalk, wharf, dock, boat ramp, sewer, drain, gutter, aqueduct or pipeline or

- portion thereof, or any new or present curb, or gutter or portion thereof in the Town and the beach or strand in or contiguous to the Town;
- (b) specify the grade thereof, the materials to be used in the doing thereof and the manner in which the same shall be done;
  - (c) enter into contracts or agreements with the State of Delaware for the permanent maintenance, repair and upkeep of any street, highway, road, alley, waterway, sidewalk or other public thoroughfare within the Town;
- 4.2.8 may provide, construct, extend, maintain, manage and control groins, bulkheads, embankments, rip rap, piers or fills for the preservation of any waterway, beach, strand or high land within the corporate limits of the Town and contiguous thereto to the end that the same may be preserved and properly protected that the general public might enjoy the use thereof;
- 4.2.9 may regulate and control the planting, growing, treatment and preserving of ornamental shade trees in the streets, avenues, highways, parks and lands of the Town and may authorize or prohibit the removal or destruction of said trees;
- 4.2.10 may fully control the drainage of all surface water within the Town, and to that end, may provide, construct, extend, maintain, manage and control a surface water drainage system for the health, sanitation, and convenience of the inhabitants of the Town;
- 4.2.11 may provide an adequate supply of potable water for the Town and its inhabitants and, to this end, may:
- (a) acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of wells, reservoirs, pumps, machines, water treatment facilities, stations, tanks, standpipes, water mains, fire hydrants and all other equipment, property, or rights used in or about the collection, storage, purification, conveyance or distribution or sale of water;
  - (b) regulate and prescribe for what public or private purposes the water furnished by the Town may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties, or both, for any willful or negligent injury, or damage to or interference with the water system or the equipment of the Town;
  - (c) furnish or refuse to furnish water from the Town system to places and properties outside the Town corporate limits; and
  - (d) contract for and purchase water and distribute the same to users within or without the Town with the same full powers as though such water had been initially reduced to usefulness by the Town itself;
- 4.2.12 may:
- (a) provide, construct, extend, maintain, manage and control: a sewer system and/or a sewage treatment and disposal plant and facilities for the health, sanitation and convenience of the inhabitants of the Town;
  - (b) regulate and prescribe for what private or public uses or purposes the system may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties or both, for any willful or negligent injury or damage to, or interference with the said system, plant or facilities;
  - (c) furnish or refuse to furnish sewer disposal service from the Town system to places and properties outside the Town limits;
  - (d) compel any and all properties in the Town to be connected to the sewer system of the Town; and
  - (e) contract for and purchase sewer disposal service and resell the same to users within or without the Town with the same full powers as though such service had been initially provided by the facilities therefor of the Town itself;
- 4.2.13 may provide for and control the lighting of the streets, highways, roads, alleys, waterways, parks, strands, crosswalks, wharfs, docks, public buildings or other public places in the Town;
- 4.2.14 may regulate, control or prevent the use or storage of gasoline, naphtha, gun powder, fireworks, tar, pitch, resin and all other combustible or dangerous materials and the use of candles, lamps and other lights in stores, shops, and other places; and may regulate, suppress, remove or secure any fireplace, stove chimney, oven broiler or other apparatus which may pose a danger of causing fires;
- 4.2.15 may:
- (a) provide for the organization of a fire department and the control and government thereof;

- (b) establish fire limits and do all things necessary for the prevention or extinguishment of fires; and
  - (c) contribute or donate funds to any volunteer fire company or companies incorporated under the Laws of the State of Delaware, or any volunteer fire association or associations maintaining and operating fire fighting equipment and service to the Town, provided that any such contribution or donation may be made subject to such conditions as to the use thereof as the Town Council may deem advisable;
- 4.2.16 may provide for the organization of ambulance, rescue or paramedic services and the control and government thereof, may establish territories within the Town for such services; and may, at the discretion of the Town Council, contribute or donate funds to any such service formed or incorporated under the Laws of the State of Delaware, or to any volunteer service maintaining and operating ambulance, rescue or paramedic equipment and services for the inhabitants of the Town, provided that any such contribution or donation may be made subject to such conditions to the use thereof as the Town Council may deem advisable;
- 4.2.17 may prohibit drunkenness, use or distribution of any controlled substance, gaming and fraudulent devices and riots, disturbances and disorderly assemblies;
- 4.2.18 may adopt and enforce such ordinances regulating traffic on all streets, highways, roads, alleys and public ways within the Town as are consistent with the motor vehicle laws of the State of Delaware;
- 4.2.19 may adopt and enforce such ordinances regulating traffic on all waterways within the Town as are consistent with U. S. Coast Guard and Delaware Marine Police regulations;
- 4.2.20 may regulate or prohibit the use of streets, highways, roads, alleys, beaches, parks, rights-of-way, other public places and Town-owned lands for commercial use, or activities not otherwise protected from such regulation or prohibition by the Constitution and Laws of the United States and the State of Delaware;
- 4.2.21 may regulate or prohibit the use of guns, air guns, spring guns, pistols, sling shots, bean shooters, and any other device for discharging missiles which may cause bodily injury or injuries or harm to persons or property; and may regulate or prevent the use of bonfires, open fires, fireworks, bombs and detonating works of all kinds within the Town;
- 4.2.22 may provide for and preserve the health, peace, safety, cleanliness, beauty, good order and public welfare of the Town;
- 4.2.23 may prohibit, restrain, license or regulate all public sports, exhibitions, shows, parades, productions, circuses or other public performances, amusements and games;
- 4.2.24 may direct the excavation, draining, filling, cleaning, curbing or fencing of privately owned lots, tracts, pieces or parcels of land in the Town which are deemed dangerous or unwholesome, or necessary to carry out any improvements authorized by this Charter and may assess the cost thereof against the owner thereof;
- 4.2.25 may define, prevent, abate or remove nuisances, obstructions or any other conditions detrimental to the public safety, health or welfare; and may cause the cost of such abatement or removal to be paid by the person or other legal entity causing or permitting same to exist;
- 4.2.26 may adopt ordinances providing for the condemnation of any building or structure in the Town which is determined, on the basis of standards set forth in such ordinances to be a fire hazard or otherwise unsafe, and may cause the same to be torn down or removed;
- 4.2.27 may adopt ordinances to establish and regulate animal pounds and restrain, prohibit and impound any domestic or wild animal, beast, bird or fowl running at large within the corporate limits of the Town; authorize the destruction of the same; and may regulate the keeping of pets within the Town, and provide for registration and fees thereof;
- 4.2.28 may provide either civil or criminal penalties for violations of any local town ordinance by appropriate fine, penalty, or forfeiture, together with the town's costs of enforcement (including but not limited to court costs and reasonable attorney's fees); and may, by ordinance, provide a voluntary assessment procedure under which any person cited for violation of a local town ordinance may admit guilt and pay the minimum fine or civil penalty provided for such violation at the Town Hall (either in person or by mail); provided that such ordinance shall require notice to the alleged violator of his/her right to a hearing before a court of competent jurisdiction, of the minimum and maximum penalties for such violation, and shall make adequate provisions to allow a person who has elected to utilize the voluntary assessment procedure the opportunity to revoke such election and proceed to a hearing if revocation of the election is made in a timely manner. 75 Del. Laws, c. 173

- 4.2.29 may regulate and control the construction, alteration, or removal of dwellings or other structures and provide for granting permits for same;
- 4.2.30 may regulate and control construction activities by private individuals or companies at such times and seasons of the year and at such hour of the day as the Town Council may determine necessary and appropriate for the public health, welfare and convenience.
- 4.2.31 may provide for and regulate the naming of the streets and waterways and the numbering of houses and commercial establishments within the Town corporate limits;
- 4.2.32 may:
- (a) establish setback lines for buildings and other structures to be erected;
  - (b) zone or district the Town and establish standards for construction and building materials;
  - (c) prohibit any construction except that for which a building permit has been issued pursuant to ordinances as prescribed by the Town Council; and
  - (d) exercise all powers and authorities pursuant to 22 Del.C. Chapter 3, or any future corresponding provisions of law;
  - (e) establish a Planning Commission and to exercise all powers and authority delegated to the Town under 22 Del.C. Chapter 7, or any future corresponding provision of law. 75 Del. Laws, c. 173
- 4.2.33 may regulate the conduct of any business, profession or occupation within the corporate limits of the Town;
- 4.2.34 may license, tax, and collect fees annually for any and all municipal purposes of such various amounts as the Town Council, from time to time, shall fix from any individual, firm, association or corporation carrying on, or practicing any business, profession or occupation within the corporate limits of the Town;
- 4.2.35 may grant licenses, issue permits, and regulate any activity within the corporate limits of the Town; specifically including any beach property, whether previously dedicated to or owned by the State of Delaware;
- 4.2.36 may impose upon new development or construction or upon first-time occupancy of new construction such "impact fees" as are reasonably calculated to recover the cost of installing, enlarging, improving or expanding public or municipal improvements which have a rational relationship to such new construction;
- 4.2.37 may borrow and appropriate money to pay the debts and liabilities of the Town, or any portion thereof, from any funds available therefor; and may, in case of emergency, temporarily transfer money from one fiscal account to another fiscal account of the Town;
- 4.2.38 may raise revenue for the Town by the levying and collecting of taxes on real property, taxes on business activities, special assessments, licensing fees and other charges for services;
- 4.2.39 may investigate the conduct of any officer, employee or representative of the Town, in the conduct of his or her official duties, and for such purpose may compel the attendance of witnesses and the production of books, records, or other evidence by subpoena, and may administer oaths or affirmations;
- 4.2.40 may establish a pension plan or a health and welfare plan or both, for the employees of the Town under such terms and conditions as the Town Council may deem appropriate, with the funding accomplished through an insurance company licensed by and authorized to do business in the State of Delaware, approved by the Town Council;
- 4.2.41 may, by condemnation proceedings, take private property or the right to use private property within the corporate limits of the Town for any of the purposes specified in this Charter, such proceedings to be in conformity with 10 Del. C. Chapter 61, or any future corresponding provision of law;
- 4.2.42 may adopt, alter, and amend all such ordinances, regulations, resolutions, and rules not contrary to the Constitution and Laws of the United States and the State of Delaware as the Town Council may deem necessary to carry into effect any of the provisions of this Charter or any Federal or State law relating generally to municipal corporations or which may be deemed proper and necessary for the order, protection, and good government of the Town; the protection of persons and preservation of property; and the protection of the public health and welfare of the Town and its inhabitants. Any ordinance relating to the public health of the Town and its inhabitants or designed to prevent the introduction or spread of infectious or contagious diseases or to prevent nuisances affecting the same, shall apply not only within the corporate limits of the Town but as well to all areas and persons outside the Town within one (1) mile from its corporate limits.
- 4.3 Liberal Construction; Manner of Exercise. The powers of the Town under this Charter shall be liberally construed in favor of the Town, and the enumeration of particular powers by this Charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated herein or implied hereby, appropriate to the



exercise thereof, the Town shall have and may exercise any and all powers which, under the Constitution and Laws of the United States and the State of Delaware, it would be competent for this Charter to specifically enumerate.

All powers of the Town, whether express or implied, shall be exercised in the manner prescribed by this Charter, or if not prescribed herein, then in the manner provided by ordinances, regulations, resolutions, and rules of the Town Council. The Council may, by ordinance or resolution, do such other act or thing incidental, necessary, or useful in connection with any of the matters duly authorized in this Charter.

- 4.4 Intergovernmental Cooperation. The Town may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise with any one (1) or more states or civil divisions or agencies thereof, or the United States or any agency thereof, except as prohibited or restricted by the Constitution and Laws of the United States and the State of Delaware or by this Charter.

## **5. Town Council.**

Governing Body. The government of the Town and the exercise of all powers conferred by this Charter, except as otherwise provided therein, shall be vested in and exercised by a seven (7) member Town Council composed of a Mayor and six (6) other members, each of whom shall be elected by popular vote as hereinafter provided. 83 Del. Laws, c. 43, § 1;

## **6. Municipal Elections.**

### **6.1 Compliance with State Law.**

6.1.1 The Town of South Bethany shall not adopt any ordinance, nor shall this Charter be interpreted in any manner that is contrary to any mandatory provisions of Delaware Code, Title 15, Chapter 75 Municipal Elections, Subchapter IV and V.

6.1.2 Compliance with state laws. The Town's municipal elections shall hereby be conducted in accordance with the state laws governing municipal elections found in Title 15 of the Delaware Code Chapter 75 Municipal Elections as it may hereafter be amended from time to time, or any future corresponding provisions of law.

### **6.2 Notices, Posting, Publishers, Deadlines and Election Calendar**

6.2.1 Notice of Solicitation of Candidates. For each election of members of the Town government, the Town shall post a Notice of Solicitation of Candidates conspicuously within the Town and on the Town website, at least twenty (20) days prior to the candidate filing deadline for the offices up for election. Such notice shall include the term or terms of each office up for election, the deadline and procedure for declaring candidacy for an office up for election and the qualifications for holding each office.

6.2.2 Notice of Election. For each election of members of the Town government, the Town shall post a Notice of Election conspicuously within the Town and on the Town website and shall publish the notice in one (1) newspaper of general circulation in the Town no later than twenty (20) days prior to the date of the election. Such notice shall include the date, time and location of the election, the candidates for each office on the ballot, a description of the positions to be filled, qualifications to vote in the election, and information on how to obtain an absentee ballot and a summary of absentee ballot procedures.

6.2.3 The annual election for Town Council and/or Mayor shall be held on the second Saturday in May, from 9am – 3pm at South Bethany Town Hall, 402 Evergreen Road, South Bethany, Delaware or at such time and place as shall be determined by Town Council, upon proper notice.

### **6.3 Voter Qualifications and Voter Registration.**

6.3.1 Voter qualifications in any municipal election, special election or referendum on voting day:

- (a) Attain eighteen (18) years of age
- (b) A citizen of the United States
- (c) Registered under the Town's voter registration ordinance (if one is in effect) and
- (d) Qualify as one of the following:

[1] Property Owner. A property owner in the Town for a period of ninety (90) consecutive days immediately preceding the date of the election. A property owner is a natural person who holds title of record or deed in his/her name; or listed as a trustee to a fee simple estate, or who holds a life estate, to real property located within the corporate limits of the Town. In no

event shall any single property be entitled to more than eight (8) votes of persons who qualify as "Property Owners" of that property.

[2] Resident. A resident of the Town shall mean any natural person who has been physically residing within the Town corporate limits for at least thirty (30) days prior to any scheduled Town election, and who maintains residency within the Town on the date of election.

6.3.2 Trusts, Corporations, Partnerships and Limited Liability Companies (LLCs both general and limited) are artificial entities and are not considered natural persons; therefore, they cannot vote in Town elections.

6.3.3 Voter Registration. The Town Council may, by ordinance, provide for the registration of voters and may prescribe voter registration and voting places. Such ordinance shall not alter the qualifications of voters as defined in this Charter nor unduly impair the right to vote in any Town election.

#### 6.4 Proof of Voter Eligibility

6.4.1 Persons appearing to vote shall present proof of identity and address. The identification shall be one or more of the following items that individually or together show the identity and address of the person:

- (a) A current State of Delaware driver's license or ID card
- (b) A uniformed service ID card
- (c) Another current photo ID issued by the State of Delaware, U.S. Government; the voter's employer, high school or higher education institution
- (d) A current utility bill, bank statement, credit card statement, a paycheck or pay advice or another type of bill or statement
- (e) A lease or sales agreement; and/or
- (f) Any other documentation that a person can reasonably and commonly accept as proof of identity and address

6.4.2 Personal recognition by a majority of the Election Officers in the polling place can attest to a voter's identity and address.

#### 6.5 Candidates, Qualifications, Terms, Declaration of Candidacy and Withdrawal of Candidacy

6.5.1 Candidates for Town Council Member or Mayor shall have been a qualified voter of the Town for at least one (1) year prior to the date of election and meet the following requirements:

- (a) Attained twenty-one (21) years of age
- (b) A citizen of the United States
- (c) Registered under the Town's voter registration ordinance (if one is in effect)
- (d) Has not been convicted of a felony or a crime of moral turpitude.

#### 6.5.2 Additional Qualifications for Mayor

A candidate for Mayor shall qualify as a "Resident" of the Town, pursuant to Charter §6.3.1(d)[2] at the time of the election. The Mayor shall remain a resident of the Town of South Bethany throughout his/her term of office. 83 Del. Laws, c. 314, § 1;

6.5.3 At least four members of the seven members of Town Council shall qualify as "Residents" of the Town, pursuant to Charter §6.3.1(d)[2] and shall maintain the status of "Resident" throughout their term. 83 Del. Laws, c. 314, § 1;

6.5.4 The term of office for each member of the Town Council and Mayor shall be two (2) years, and no person shall serve more than three (3) consecutive terms as Mayor, effective with terms beginning on or after the Election.

6.5.5 Staggered terms. The Mayor and three (3) members of the Town Council shall be elected in even years and three (3) members of Town Council shall be elected in odd years.

6.5.6 Prohibition of employment with Town. Neither the Mayor nor any member of the Town Council shall be employed by the Town in any capacity during their term of office.

6.5.7 Notice of Intention of Candidacy. In order to be listed on the ballot at any regular or special election of Mayor or Town Council members, each candidate shall file a written Notice of Intention of Candidacy to seek office with the Town, on a form prescribed by the Town, during normal business hours. The Town shall submit the names of candidates for each office up for elections to the Department of Elections no later than one business day following the filing deadlines for the elected positions.

6.5.8 If the Board of Elections determines that any candidate may not meet the qualifications for office, the Board of Elections shall notify the Mayor, who shall call a special meeting of the Town Council to be held

not less than twenty (20) days prior to the Notice of Election posting. The candidate whose qualifications are at issue shall be notified of the date, time and place of the hearing at which he or she may appear and testify. If the Town Council determines that the candidate does not meet the qualifications for office, it shall reject his or her Notice of Intention of Candidacy and his or her name shall not appear on the ballot. In making the determination, only those members of the Town Council who are not running for re-election shall be entitled to vote on the challenge.

- 6.5.9 Certificate of Intention of Candidacy. A candidate for municipal office shall file a Certificate of Intention or a Statement of Organization establishing a campaign committee with the State Election Commissioner no later than seven (7) days after declaring that candidate's candidacy as defined in Delaware Code, Title 15, Chapter 75.
- 6.5.10 Where the number of qualified candidates for an office is equal to or less than the number of seats up for election, the Board of Elections shall declare the candidate or candidates elected. However, in no event will a new term for any candidate begin until the swearing in and the Organizational meeting of Town Council.
- 6.5.11 Withdrawal. A person may withdraw as a candidate by filing with the Town the form promulgated by the State Election Commissioner for that purpose.
- 6.6 Board of Elections, Qualifications, Electioneering, Powers and Duties, Term, and Responsibilities.
  - 6.6.1 Every election shall be held under the supervision of a Board of Elections, which shall consist of three (3) members and the Board of Elections shall be appointed by the Town Council. Members of the Board of Elections shall take the oath as defined in 15 Del.C.§7551(d).
  - 6.6.2 The members of the Board of Elections shall be qualified voters of the Town and shall not be an elected official or candidate or immediate family member of an elected official or candidate, as defined in 15 Del.C.§7551(b). Members of the Board of Elections shall not participate in electioneering.
  - 6.6.3 Members of the Board of Elections shall be the sole and final judges of the conduct of the election, the legality of the votes offered and the election results, subject to any applicable state or federal laws.
  - 6.6.4 The Board of Elections shall have the power to subpoena persons and records relative to the determination of the qualifications of voters and the legality of any vote or votes offered.
  - 6.6.5 If, at the opening of the polls, there shall not be present any members of the Board of Elections, in such case the ranking Town Manager or his/her designee available at the opening of the polls shall appoint a qualified voter or voters to act as a member or members of the Board of Elections to fill such vacancies caused by such absences.
  - 6.6.6 The Town shall post the names and contact information for its Board of Elections in the Town hall and on the Town website.
- 6.7 Conduct of the Election. Elections and voting procedures shall be conducted in accordance with all provisions set forth in 15 Del.C.§7556 and §7557.
- 6.8 Close of Polls and Election Results.
  - 6.8.1 Thirty (30) minutes prior to the closing of the polls, the Inspector shall announce or have another Election Officer announce that the polls shall close in thirty (30) minutes, both in the voting room and outside of the entrance of the building used by voters.
  - 6.8.2 At the time that the polls close, the Inspector or Election Officer shall announce that the polls have closed both in the voting room and outside of the entrance to the building used by voters. The Election Officers shall permit any person to vote who was in line at the time the polls closed.
  - 6.8.3 The Election Officers shall remove the cartridges and tapes from each voting machine, record the protective counter and seal numbers on the Voting Machine Certificate, close the voting machines, complete the Vote Tabulation for the election, and post a copy of the results tape from each voting machine on the door of the polling place.
  - 6.8.4 The Election Officers, as soon as possible after the polls have closed and the unofficial results announced, shall deliver all election documents, envelopes and absentee ballots to the municipality's Board of Elections. All votes shall be counted by the Board of Election. The Board of Elections shall announce the results of an election as soon as possible following the close of the polls.
  - 6.8.5 Tie vote. In the event of a tie vote for any office, the election to such office shall be determined by a runoff election within thirty (30) days pursuant to the election procedures of this chapter. 78 Del. Laws, c. 324, § 1; 83 Del. Laws, c. 43, § 2;

**7. Organization of Town Council.**

- 7.1 Organizational Meeting. An organizational meeting of the Town Council shall be held within 30 days following the date of the election. Such meeting shall be held at the usual place for holding regular Town Council meetings and shall be open to the public. The newly elected Mayor and other Town Council members shall assume the duties of their respective offices, being first duly sworn or affirmed to perform their duties with fidelity. Such oath or affirmation shall be taken before a Notary Public, a Justice of the Peace, or by one (1) of the holdover Town Council members. At the organizational meeting, the Mayor shall appoint a Mayor Pro-tempore, a Council Secretary, and a Treasurer subject to ratification by majority vote of the Town Council. Each of these officers of the Town Council shall serve in that position for a term of one (1) year or until the organizational meeting after the next succeeding election. 83 Del. Laws, c. 43, § 3; 83 Del. Laws, c. 314, § 2;
- 7.2 Duties of Mayor. The Mayor shall preside at all meetings of the Town Council and shall have a vote on all pending issues. The Mayor, and in the absence of the Mayor, the Town Manager, shall execute, on behalf of the Town, when authorized by Town Council majority vote, all agreements, contracts, bonds, deeds, leases, and other legal documents. The Mayor shall appoint such standing and other committees as the Town Council shall require. A member of the Town Council may serve as the Chairperson for standing committees and/or any other committees. The Mayor shall be authorized to administer oaths and affirmations. The Mayor shall perform such additional duties as are specifically imposed upon that office by this Charter, and as are specifically delegated to the Mayor by majority vote of the Town Council. 78 Del. Laws, c. 324, § 2; 80 Del. Laws, c. 100, § 1
- 7.2.1 Emergency Powers. The Mayor shall be empowered to act on behalf of the Town, without prior Town Council approval, in the event of a sudden emergency requiring prompt action, in order to protect the public health, safety, and welfare of the Town, its inhabitants and property owners. A "sudden emergency", for purposes of this Section shall include, by way of example and not in limitation, a major fire or conflagration, significant flooding, or serious storm threatening significant damage, public health emergency, a civic disturbance, or a toxic spill. A "sudden emergency" shall also include any emergency situation as declared by any county, state or federal agency having jurisdiction over the Town where the scope of the emergency so declared includes the Town and urgent, compelling circumstances prevent action being taken by the Town Council. 83 Del. Laws, c. 43, § 3;
- 7.3 Duties of Mayor Pro Tempore. The Mayor Pro-tempore shall function as Mayor during the absence or disability of the Mayor. 83 Del. Laws, c. 43, § 3;
- 7.4 Duties of Council Secretary. The Council Secretary shall be responsible for recording the proceedings of the Town Council and for maintaining safe custody of other Town records and shall perform such other duties as directed by ordinance or the Town Council.
- 7.5 Duties of Treasurer. It shall be the duty of the Treasurer or his/her designee to attend all Town Council meetings, unless duly excused. It is the responsibility of the Mayor to name a designee to serve in the absence of the Treasurer. The Treasurer shall be responsible for maintaining custody of all Town funds in a financial institution selected by the Town Council; for deposit of all Town receipts and disbursement of Town funds in payment of bills presented for payment; for presenting an annual financial report to the Town Council at the end of the fiscal year; and for performing such other duties as directed by ordinance or the Town Council. The Treasurer may be assisted by Town staff as needed in carrying out these responsibilities. The Treasurer, before assuming the duties of such office, shall be required to give bond with sufficient surety to the Town Council in an amount at least equal to the funds likely to be handled in the discharge of such duties. The Treasurer shall at the end of such term of office deliver to his/her successor in office all fiscal records relating to such office and all Town funds then held in the Treasurer's custody as part of the settlement of final account. The cost of said bond shall be paid out of Town funds. 72 Del. Laws, c. 354; 83 Del. Laws, c. 43, § 3;
- 7.6 Filling Vacancies of Appointed Officers. If a vacancy shall occur in the office of any officer appointed pursuant to Sec. 7.1 of this Charter, the successor shall be selected for the unexpired term pursuant to the procedures of Sec. 7.1.
- 7.7 Code of Ethics; Contracts; Competitive Bidding.
- 7.7.1 Code of Ethics. The Town Council may, by ordinance, adopt a Code of Ethics to govern all members of the Town Council, officers, and employees of the Town.
- 7.7.2 Contracts; Competitive Bidding. The Town Council may, by ordinance, adopt standards and procedures to govern the Town's entering into contracts, purchasing, and competitive bidding.
- [1] Editor's Note: See also Ch. 6 Contracts and Bidding. 83 Del. Laws, c. 43, § 3;
- 7.8 Vacancies, Forfeiture of Office.

- 7.8.1 Vacancies. The office of a Town Council member shall become vacant upon death, incapacitation, resignation or forfeiture of such office.
- 7.8.2 Forfeiture Proceedings. A forfeiture of such office shall occur when any Town Council member:
- (a) is no longer qualified as provided in § this Charter to hold such office;
  - (b) willfully violates any provision of this Charter;
  - (c) is convicted of any felony or crime involving moral turpitude; or
  - (d) fails to attend three (3) consecutive regular Town Council meetings without being excused by Town Council vote.
  - (e) is physically, mentally, and/or emotionally incapable of performing his/her duties.
- 7.8.3 Determination Concerning Forfeiture. Where the conditions set forth in Sec. 7.8.2 (c) occur, forfeiture shall be automatic.
- Where the conditions set forth in §7.8.2 (a), (b), (d) or (e) are alleged, a preliminary discussion concerning "probable cause" to believe a forfeiture may have occurred shall be had by the Town Council in Executive Session. If the Town Council, in open session following such Executive Session, by a majority vote of its disinterested members, concludes that probable cause exists that a forfeiture under §7.8.2 (a), (b), (d) or (e) has occurred, it shall, within 48 hours thereafter, provide written notice thereof to the affected Town Councilmember by certified mail, return receipt requested, sufficiently posted. "Written notice" shall be deemed provided when deposited in first-class mail with sufficient postage. The affected member shall be entitled to a hearing and shall then have thirty (30) days in which to make a written request for a public hearing before the Town Council, to be held within forty-five (45) days of the written request, at which hearing such member may appear with the assistance of counsel, at the member's own expense, and present evidence to the relevant issues. The Town Council shall also hear any other relevant evidence and vote again on the question of forfeiture. A determination of forfeiture shall be made only by unanimous vote of the Town Council members present and entitled to vote on the question. 83 Del. Laws, c. 43, § 3;
- 7.8.4 Failure to Request Hearing as a Bar. Failure of the affected member to make written request for a public hearing as hereinabove stated shall be an absolute bar to his or her right to challenge the Town Council's decision. If a public hearing is held, the Town Council shall have authority to subpoena witnesses, administer oaths, take testimony, and require the production of documentary or physical evidence, all of which shall be done if requested in writing by the affected person.
- 7.9 Filling Vacancies. A vacancy in the office of the Mayor or of any other Town Council member shall be filled for the unexpired term by a person qualified to fill the position.
- 7.9.1 Procedure; Office of the Mayor. Upon the occurrence of a vacancy in the office of the Mayor, the Mayor Pro-tempore shall assume the duties and responsibilities of Mayor until such time as a new Mayor is elected and installed in office. A vacancy in the office of Mayor shall be filled for the remainder of the unexpired term at the next annual municipal election. If the next annual municipal election is to occur more than 120 days from the occurrence of the vacancy, the Town Council shall, within 24 hours of notice of the vacancy, announce the existence of the vacancy and the date and time for a special election to be held for the remainder of the term of office. Said election shall be held within sixty (60) days of the announcement of said vacancy. Said special election shall be held pursuant to the provisions as provided in § C 6 of this Charter. 83 Del. Laws, c. 43, § 3;
- 7.9.2 Other Council Members. A vacancy in the office of any Council member other than Mayor shall be filled for the remainder of the unexpired term at the next annual municipal election. If the next annual municipal election occurs more than sixty (60) days after the occurrence of the vacancy, the Town Council, by a majority vote of the remaining members in an open meeting, shall appoint a qualified person to fill such vacancy until the next annual municipal election. If the vacancy occurs within sixty (60) days of the expiration of term of office, such vacancy shall not be filled.
- 7.10 Meetings.
- 7.10.1 Regular meetings and workshop meetings. The Town Council shall hold at least eleven (11) regular meetings during the year and as many workshop meetings as needed. Subject to the provisions of the Delaware Freedom of Information Act regarding executive sessions, all such meetings shall be open to the public. The time and place of each regular meeting shall be set by the Town Council each year at its organizational meeting, but such meetings may be rescheduled by the Mayor as need arises, subject to the requirement of adequate public notice. 78 Del. Laws, c. 324, § 3

- 7.10.2 Special Meetings. Special meetings of the Town Council shall be called upon the written request of the Mayor or any four members of the Council stating the day, hour, and place of such meeting, and the subject or subjects to be considered thereat. Notice of such meeting shall be made in accordance with the provisions of the Delaware Freedom of Information Act. Subject to the scope of the notice, the Town Council shall have the same power and authority to enact all ordinances, adopt all regulations, resolutions and rules, pass all motions, make all orders, and transact all business at any such special meeting called for as aforesaid as Council has at a regular meeting. Provided however, that the aforesaid procedure shall not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health, or safety. 83 Del. Laws, c. 43, § 3;
- 7.10.3 Adjourned Meetings. The Town Council may adjourn its meetings from time to time, provided that adequate public notice shall be given of the date, place, and time for the resumption of such meetings.
- 7.10.4 Open Meetings. All meetings of all Town governmental bodies shall be in compliance with the Freedom of Information Act, (Title 29, Chapter 100, Delaware Code), or any future corresponding provision of law.
- 7.10.5 Place of Meetings. All regular, special, and adjourned meetings of the Town Council shall be held within the corporate limits of the Town, except that emergency meetings may be held elsewhere.
- 7.11 Town Council Actions.
- 7.11.1 Council Actions. No Town Council actions may be taken except at a duly convened meeting.
- 7.11.2 Rules of Procedure, Record of Proceedings. The Town Council shall determine its own rules of procedure and order of business. It shall keep a record of its proceedings which shall be open to public inspection.
- 7.11.3 Ordinances, Regulations, Resolutions, and Rules. The Town Council is hereby vested with the authority to adopt ordinances, regulations, resolutions, and rules relating to any subject within the powers and functions of the Town, or relating to the government of the Town, its peace and order, sanitation, beauty, health, safety, convenience and property, and to fix, impose and enforce the payment of fines and penalties for the violation of such ordinances, regulations, resolutions, and rules. No provision of this Charter on any particular subject shall be held to be restrictive of the power to enact ordinances, regulations, resolutions, and rules on any subject not specifically enumerated, provided they do not violate State or Federal law. In addition to other acts required by law or this Charter the Town Council may by ordinance:
- (a) adopt or amend administrative rules, or establish or reorganize any Town department, office or agency;
  - (b) provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
  - (c) grant, renew, extend, or terminate a franchise; and
  - (d) amend or repeal any ordinances previously adopted.
- Every ordinance shall be introduced in writing. Voting on any ordinance shall be by roll call vote, and the vote of each Town Council member on any ordinance shall be entered on the record. No ordinance shall be adopted unless it shall have the affirmative vote of a majority of the entire Town Council.
- The Town Council shall not have the power to exempt any individual from the application of any ordinance, regulation, resolution, or rule of the Town, except as set out in this Charter or as provided by the Constitution and Laws of the United States and the State of Delaware.
- 7.11.4 Emergency Ordinances. To meet an emergency affecting public health, safety, and welfare the Town Council may adopt one (1) or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its service, or authorize the borrowing of money except as provided in Sec. 13 of this Charter. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it was introduced, but the majority vote of all Town Council members shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance shall automatically stand repealed as of the one hundred twentieth (120th) day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this Sub-section if the emergency still exists. An

emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this Section for the adoption of emergency ordinances.

- 7.11.5 Quorum. Four (4) members of the Town Council shall be present in order to constitute a quorum to conduct business. Council decisions shall require voting approval of a majority of the entire Council.
  - 7.11.6 Vote Necessary to Carry Action. All powers of the Town Council, whether expressed or implied, shall be exercised in the manner provided herein, or if not prescribed herein, then by ordinances, regulations, resolutions, and rules. In the general performance of their duties, the acts, doings and determinations of a majority of the entire Council shall be as valid as the acts, and determinations of all the members of the Council.
  - 7.11.7 Participation and Voting by Remote Access. The Town Council is hereby authorized, to the extent permitted or required by Delaware law including, but not limited to, a declared state of emergency and/or provisions of the Freedom of Information Act, to allow participation and voting by remote electronic access, provided the public has physical and/or electronic access to public meetings. 83 Del. Laws, c. 43, § 3;
  - 7.11.8 Compensation of Council Members. Each Town Council member may receive compensation for services to the Town as may be prescribed by ordinance.
- 7.12 Succession of Authority. In the event that the Mayor is absent or incapable of assuming responsibilities, such responsibility shall be carried out by the following Town officials in the following order:
- 1) Mayor Pro-tempore,
  - 2) each of the remaining Council members in order of seniority in years of Council service,
  - 3) Council Secretary, and
  - 4) Treasurer. 83 Del. Laws, c. 43, § 3;

## 8. Appointed Officers.

### 8.1 Town Manager.

- 8.1.1 Appointment and Removal. The Town Council may appoint a Town Manager who shall be the chief managerial administrative officer of the Town. All departments in the Town, including the Police Department, shall report directly to the Town Manager. The terms and conditions of such employment shall be included in a written agreement between the Town Council and the Town Manager. The Town Manager shall be appointed solely on the basis of professional, executive, and administrative qualifications and experience. Such person shall reside no farther than thirty (30) miles from the Town. No member of the Town Council may serve as Town Manager unless he or she first resigns. Subject to any limitations set forth in the written agreement between the Town Manager and the Town Council, the Town Manager shall serve at the pleasure of the Town Council. In case of the temporary absence, disability, or other interruption of service of the Town Manager, the Town Council may designate some other competent person to perform the duties of the office during such period. 81 Del. Laws, c. 259, § 1;

### 8.1.2 Functions and Duties of Town Manager.

The Town Manager shall be responsible for the administration of all governmental activities of the Town which are assigned by or under this Charter. The functions and duties of the Town Manager shall be set forth in an ordinance enacted by the Town Council.

- 8.2 Town Solicitor. The Town Council shall appoint a Town Solicitor who shall be removable at the pleasure of the Town Council. The Solicitor shall be a member in good standing of the Bar of the State of Delaware with law offices in Sussex County. It shall be the Solicitor's duty to give legal advice to the Town Council, the Town Manager, and other officers of the Town, and to perform such other legal services as may be required by the Town Council.

### 8.3 Other Officers and Employees.

- 8.3.1 Appointment and Employment. The Town Council may authorize the Town Manager to appoint or employ such other officers and employees deemed necessary for the proper management of the Town.
- 8.3.2 Termination of Appointment of Employment. The Town Manager may at any time terminate the service of any Town officer, after he or she has obtained approval from the Mayor and Town Council, or employee unless otherwise proscribed by the terms of a written contract, a written personnel policy, a written personnel or merit system, a written grievance or disciplinary procedure adopted by the Town Council. The Town Manager's decision shall be deemed to be upheld after a majority of the Town Council votes to approve the Town Manager's decision.

- 8.4 Compensation. The Town Council shall by ordinance or resolution fix the amount of any compensation of the officers, employees and representatives of the Town, as well as reimbursement for actual and necessary expenses incurred by them in the performance of their duties.
- 8.5 The Town shall maintain appropriate personnel records on all employees of the Town.

**9. Assessment for Taxes.**

9.1 Board of Assessment.

- 9.1.1 Appointment. The Mayor may, with the approval of the entire Town Council, appoint a Board of Assessment composed of three (3) members, each of whom shall be a property owner within the corporate limits of the Town, and who shall serve for a three (3) year term, established on a staggered basis, one (1) term expiring annually.

The Mayor may, with the approval of the entire Town Council, appoint a Board of Assessment Review, composed of three (3) members, none of whom shall be a property owner within the corporate limits of the Town, and who shall serve for a three (3) year term, established on a staggered basis, one (1) term expiring annually.

The Town Council may authorize the retention of professional services to assist the Board of Assessment and Board of Assessment Review. In all instances the Board of Assessment shall be responsible for making final assessment determinations, subject to assessment review.

- 9.1.2 Oaths, Duties, Compensation. The Members of the Board of Assessment shall be sworn or affirmed by the Mayor, a Justice of Peace, or Town Alderman, to perform their duties diligently, with fidelity and without favor to the best of their ability, knowledge and judgment. It shall be the duty of the Board of Assessment to make a fair and impartial assessment of property subject to taxation situate within the corporate limits of the Town and to perform such other duties with reference thereto as shall be prescribed from time to time by the Town Council. The compensation received by such members for the performance of their duties, and the hiring of employees or consultants to assist them in the performance of their duties, shall be approved by the Town Council.
- 9.1.3 Adoption of Sussex County Assessments. The Town Council may elect to use the assessment by the Sussex County Board of Assessment for all property located within the corporate limits of the Town in lieu of making its own independent valuation and assessment of such property. In such event, the assessed values established by Sussex County shall be conclusive for purposes of levying Town taxes, and the Town Council shall have no authority to hear appeals (under Sec. 9.3) regarding same. If the Town Council elects to adopt the Sussex County assessments, then Sections 9.1.1, 9.1.2, 9.2, and 9.3 shall not apply.
- 9.1.4 Addition to Tax Bills. Whether utilizing the Sussex County assessments or those prepared by the Town's own Board of Assessments, the Town Council shall annually, prior to the posting of the assessment list, by resolution, provide a list of any and all charges, costs or other assessments owed to the Town, which list of charges incurred shall include, but not be limited to, the following: Water assessments, weed and grass cutting bills, trash collection bills and past due water rents.

9.2. Assessment Procedure.

- 9.2.1 Making the Assessment. If appointed, the Board of Assessment shall, prior to the first day of April of each year, make a just, true and impartial annual valuation and assessment of all real estate located within the corporate limits of the Town, based on current fair market value. All real estate shall be described with sufficient particularity to be identified and shall be assessed to the owner or owners thereof. If such owner or owners of real estate cannot be found or ascertained, the property shall be assessed to "Owner Unknown". A mistake in the name of the owner or owners or a wrong name of an assessment to "Owner Unknown" shall not affect the validity of the assessment or the tax based thereon; provided, however, that the assessment shall specify the last record owner or owners of the property as the same shall appear in the records of the Office of the Recorder of Deeds, in and for Sussex County.
- 9.2.2 Assessment of Members of the Board of Assessment. The real property of the members of the Board of Assessment shall be valued by an ad hoc group of three (3) local real estate brokers selected by the Town Council.



9.2.3 Delivery of Assessment List. The Board of Assessment, after making such annual valuation and assessment, shall deliver to the Town Council a list containing the names of owners of all properties assessed and the amount of assessment against each.

9.3 Assessment Appeals.

9.3.1 Authorization of Appeal. Any aggrieved property owner may appeal (1) his property assessment and (2) additions to his tax bill pursuant to the provisions of this Section and procedures established by the Town Council.

9.3.2 Posting of Assessment List; Notice. Immediately upon receiving the annual assessment list from the Board of Assessment, the Town Council shall cause a full and complete copy of the same, containing the amount assessed to each property, to be made available for public inspection at the Town Office for a period of at least sixty (60) days. Appended thereto, and also in five (5) or more public places in the Town, shall be posted a notice of the date and place where the assessment list has been made available, stating that, a day shall be set (not earlier than sixty (60) days after the assessment list has been made available), for the Board of Assessment Review to hear assessment appeals and make such corrections and revisions deemed appropriate. Any aggrieved property owner may file an appeal within ninety (90) days after the first day of posting of the assessment list. Such notice shall also be published at least once in at least two (2) newspapers of general circulation in the Town not less than thirty (30) days prior to the date set for such appeals.

9.3.3 Appeals Day. On the day set for such appeals, the Board of Assessment Review will hear appeals from the said assessment and correct and revise the assessment as deemed appropriate. The Board of Assessment Review shall have full power and authority to alter, revise, increase, or reduce the said assessment. The decision of a majority of the Board of Assessment Review shall be final and conclusive, unless an appeal is taken to the Superior Court of the State of Delaware in and for Sussex County within thirty (30) days from the date of the Board's decision.

The Board of Assessment shall be present at all appeal hearings and shall furnish to the Board of Assessment Review such information as it may require in respect to any assessment for which an appeal has been taken.

**10. Levy of Taxes, Fees, Special Assessments and Other Charges (hereinafter referred to as "taxes").**

10.1 Establishment of Balanced Budget. After the valuation and assessment process has been completed, the Town Council shall adopt an annual balanced operating budget, and may adopt a capital budget for the ensuing fiscal year, including sufficient revenue to meet the fixed and anticipated expenses and obligations of the Town, reasonable and appropriate reserves and a reasonable amount to cover emergencies.

10.2 Determination of Revenue Sources. The Town Council shall determine the appropriate revenue sources within the limits prescribed by this Charter, with respect to the amount to be raised from each such source. It shall then determine, assess, fix and/or levy as follows:

10.2.1 Real Estate and Improvements. The rate of tax on real estate including improvements, shall be fixed per one hundred dollars (\$100.00) of the assessed value. and/or

10.2.2 Real Estate Transfer Tax. Appropriate transfer taxes to be charged upon the transfer of real property, or any interest in real property, situate within the corporate limits of the Town, provided, however, that no tax levied under this Section shall exceed 1.5% of the sales price (including the value of any assumed mortgage or mortgages) or fair market value of the real property so transferred; and provided, further, that no tax shall be levied upon an organization exempted from ad valorem real estate taxes; and/or

10.2.3 License Fees. Appropriate license fees to be charged for carrying on or conducting of the several businesses, professions or occupations as authorized by Sec. 4.2.35 of this Charter; and/or

10.2.4 Municipal Services. Appropriate charges for furnishing water service, front footage assessment, trash collection, and other services authorized by the Town Council; and/or

10.2.5 Other Services. The fees or rates to be charged in respect to any other authorized source of revenue; and/or

10.2.6 Business Taxes. Appropriate taxes on the gross receipts of any business activity, as defined by the Town Council, conducted within the corporate limits of the Town.

10.3 Levy of Real Property Tax. The setting of the tax rate by Town Council resolution shall constitute the levy of such taxes in accordance with the assessment list (subject to any pending assessment appeals to the Superior Court).

- 10.4 Special Assessment. The Town Council is empowered to levy a special assessment against any or all real property situated within the corporate limits of the Town, when determined by the Council to provide a necessary public work, improvement, or municipal service. Such assessments shall be duly collected, the proceeds of which shall be applied for the payment of the cost of such work, improvement, or service, provided, however, that if such assessment shall apply to all properties within the Town, it shall first be approved by majority vote of the Town voters in a special election. In order to proceed under the powers granted in this Section, the Town Council shall authorize such special assessment in the following manner:
- 10.4.1 The Town Council, by resolution, shall give notice to the voters of the Town that the Town Council proposes to levy a special assessment against any or all real property situated within the corporate limits of the Town. The resolution shall state the amount of money desired, the purpose for which it is desired, and all other pertinent facts relating to the assessment which are deemed pertinent by the Council in its possession at the time of the passage of the resolution and shall fix a time and place for a public hearing on the said resolution.
- 10.4.2 Notice of the time and place of the public hearing on the resolution authorizing the special assessment shall be published at least once in at least two (2) newspapers having a general circulation in the Town not less than thirty (30) days nor more than forty-five (45) days prior to the public hearing. In addition to such publication, the Town Council shall cause notices to be posted in at least five (5) public places in the Town not less than thirty (30) days, and not more than forty-five (45) days prior to the day set for the public hearing. Notices concerning such public hearings shall be in bold print or bordered in black, in such manner as to call attention thereto;
- 10.4.3 If, following the public hearing, the Town Council determines to proceed with the proposed special assessment, it shall adopt a second resolution ordering a special election, to be held not less than thirty (30) days, nor more than sixty (60) days after the said public hearing relating to the special assessment. The adoption of the second resolution calling a special election shall be considered the determination of the Town Council to proceed with the matter in issue; provided, however, that if the annual municipal election is to be held within one hundred twenty (120) days of the date of the resolution adopted by the Town Council pursuant to this Section, the election on the proposed special assessment may be held in conjunction with the annual municipal election and all provisions hereof shall be construed and applied accordingly.
- 10.4.4 The notice of the time and place of holding such special election shall be printed in one (1) issue of two (2) newspapers having general circulation in the Town of South Bethany, not less than thirty (30) days, nor more than forty-five (45) days prior to the special election. In addition to such publication, the Town shall cause to be posted in at least five (5) public places in the Town, not less than thirty (30) days and not more than forty-five (45) days prior to the special election, public notices concerning the special election. In addition to the time and place of the special election, such notices shall contain the same information as required under Sec. 10.4.1, and shall be in bold print or bordered in black, in such manner as to call attention thereto.
- 10.4.5 At such special election, any person who is entitled to vote in the annual municipal election, if it were held on that day, shall be entitled to one (1) vote. For purposes of this Section, "entitled to vote" shall include "registered to vote" if voter registration is required for the annual election. Any special election held pursuant to the provisions of this Section shall be conducted by voting machines, electronic voting systems, or printed ballots as permitted by law which shall have the following designation:
- ( ) For the proposed Special Assessment  
( ) Against the proposed Special Assessment
- The Mayor, by and with the advice and consent of the majority of the Town Council, shall appoint three (3) persons to act as a Board of Special Election. The polling place shall be opened for a minimum of six (6) hours, as specified by resolutions of the Town Council. Persons in the polling place at the time scheduled for closing of the polls shall be entitled to vote;
- 10.4.6 The Board of Special Election shall be the sole and final judge of the legality of the votes offered at such special election. It shall keep a true and accurate list of all persons voting. It shall count the votes "for" and "against" the proposed special assessment and shall announce the result thereof. The Board of Special Election shall execute a certificate of the number of votes cast "for" and "against" the proposed Special Assessment and the number of void votes, and shall deliver the same to the Town Office.
- 10.4.7 If a majority of the votes cast at such special election shall be in favor of such special assessment, the Town Council shall proceed with the special assessment.

- 10.5 Limitation on Taxes. The total amount of money to be raised by real property taxes and special taxes levied or imposed in connection with any municipal bond issued (Sec.13.2.7), shall in no year exceed two (2) percent of the total appraised valuation of all taxable real estate (and improvements thereon) in the Town.
- 10.6 Savings Clause. Nothing contained in this Charter shall be construed to affect or impair, in any way, the validity of any taxes lawfully levied, assessed or due the Town under existing laws in reference to said Town.

**11. Collection of Taxes, Fees, Special Assessments and Other Charges (hereinafter referred to as taxes).**

- 11.1 Collection by Town Manager or Tax Collector.
- (a) After the Town Council shall have set the real estate tax rate pursuant to Sec. 10.2.1, the Town Manager or duly appointed Tax Collector, shall proceed to collect the taxes so levied.
- (b) The Town Manager or duly appointed Tax Collector, shall collect the taxes fixed pursuant to Sec. 10.2.
- (c) The Town Council shall obtain a bond for the Town Manager or duly appointed Tax Collector, in a form suitable to the Town Council with sufficient surety, in favor of the Town, in a sum to be determined by the Town Council for the collection of all such taxes and for the payment of them to the Town Treasurer.
- 11.2 Other amounts due the Town to be added to assessment list; Posting of Assessment List. Whether utilizing the Sussex County assessments or those prepared by the Town's own Board of Assessment, the Town Council shall annually, prior to posting the assessment list, review and approve a list prepared by the Town Manager, of any and all charges, costs, fees, fines, penalties, and/or assessments owed to the Town (including all interest and penalties thereon), which list shall include, but not be limited to: assessments for the installation of sanitary sewage collection facilities, water distribution facilities, drainage facilities, sidewalks and curbs, streets, beach replenishments; amounts owed for availability or use of sanitary sewer systems, water distribution systems, solid waste collection; costs of condemning, razing, or demolishing structures done through expenditures of public ( e.g. federal, state, county, or town) funds; costs of making duly authorized improvements to the exteriors of buildings or premises done through expenditures of public funds (e.g. federal, state, county, or town); costs incurred to correct and abate nuisances; weed and grass cutting charges; license or permit fees, and fines or penalties duly imposed for violations of any Town code or ordinance. Said amounts, as reviewed and approved by the Town Council, shall be shown on the assessment list posted pursuant to the provisions of §9.3.2 of this Charter and any and all such amounts (in addition to the real estate taxes) shall, for convenience, be hereinafter referred to in §11 and §12 as 'taxes'.
- 11.3 Lien. All taxes imposed by the Town shall be and constitute a lien for a period of ten (10) years from the date so levied, upon the real property against which such charges are imposed. In the case of a life estate, the interest of the life tenant shall first be liable for the payment of any charges so levied. Such lien shall have preference and priority over all other prior liens on such real property, although such lien or liens be of a time and date prior to the time of attaching of such lien for taxes.
- 11.4 Due Date. All taxes and other charges, when and as collected by the Town Manager or duly appointed Tax Collector, shall be paid to or deposited to the credit of the Town in federally insured financial institutions, or the Delaware Local Government Investment Pool, and State of Delaware agencies approved by the Town Council. All taxes shall be due and payable at and from the time the tax rate is set pursuant to Sec. 10.2.1.
- 11.5 Place of Payment. All taxes shall be payable at the Town Office during the normal business hours of that office.
- 11.6 Penalty for Late Payment; Collection Fee. All taxes unpaid on such date as specified by ordinance, shall be considered delinquent. On such delinquencies, an appropriate penalty shall be imposed by the Town Council except that the Town Council may make just allowances. In any proceeding (including, but not limited to attachment, monition, tax sale, debt action, or sale of lands pursuant to procedures set out in this Charter) for the collection of taxes and/or charges owed to the Town which have been added to the assessment list pursuant to §11.2 above, and which thereby constitute a lien against said property under §11.3, the Town Manager shall be entitled to collect, in addition to the amounts due and the penalties and/or interest thereon, all documented court costs, attorneys fees, and other reasonable and necessary out-of-pocket expenses incurred by the Town in such collection proceedings.
- 11.7 Exemption from Taxation. The Council shall have the power by ordinance to allow credits to reduce the taxes otherwise imposed by this Section with respect to real property owned by taxpayers of low income who have an annual adjusted gross income not exceeding an amount as set by ordinance, excluding Social Security and/or Railroad Pension Fund, and who are over sixty-two (62) years of age.

**12. Remedies, Powers and Methods for Collection of Taxes Fees, Special Assessments and Other Charges (hereinafter referred to as taxes).**

- 12.1 Prior Notice. Before exercising any of the powers herein given for the collection of taxes written notice of the amount due shall be sent to the delinquent taxpayer at his/her last known address.
- 12.2 Debt Action. When any tax has become delinquent, the Town Manager may, in the name of the Town of South Bethany, institute suit before any court of competent jurisdiction for the recovery of the unpaid amount in an action of debt. Upon judgment obtained, the Town Manager may sue out writs of execution as in the case of other judgments recovered before any court of competent jurisdiction provided, however, that as to any personal property of the delinquent taxpayer located in Sussex County and levied upon by the Sheriff within sixty (60) days after the writ of execution was delivered into his or her hands, the lien of judgment shall have priority over all other prior liens against such personal property created or suffered by the delinquent taxpayer (excepting only the liens of the federal or state governments).
- 12.3 Sale of Lands. Should the Town Manager so elect, and without the necessity of employing any or all of the other remedies provided herein, the Town Manager is authorized and empowered to sell the lands and tenements of a delinquent taxpayer or the lands and tenements alienated by a delinquent taxpayer subsequent to the levy of the tax by the following procedure:
- 12.3.1 The Town Manager shall present, in the name of the Town of South Bethany, to the Superior Court of the State of Delaware, in and for Sussex County, a petition in which shall be stated:
- (a) the name of the person owing payment;
  - (b) the year for which tax was levied, assessed or charged;
  - (c) the rate of tax;
  - (d) the total amount due; the date from which the penalty for nonpayment, if any, shall commence and the rate of such penalty and any collection charge permitted;
  - (f) a short description of the lands and tenements proposed to be sold, sufficient to reasonably identify same;
  - (g) a statement that the bill of said tax has been mailed to the delinquent taxpayer at his or her last known post office address with return receipt requested by certified mail and postage prepaid, together with a notice that the Town Manager will proceed to sell the lands and tenements of the delinquent taxpayer for payment of the tax due the Town; and the date of such mailing; and
  - (h) the petition shall be signed by the Town Manager and shall be verified before a Notary Public.
- 12.3.2 At least ten (10) days prior to the filing of any such petition as described herein, the Town Manager shall deposit in the mail in a sealed and stamped envelope and addressed to the delinquent taxpayer at his or her last known post office address requiring a return receipt, an itemized statement of the tax together with all penalties, collection charges, and costs then due thereon, together with a notice to the delinquent taxpayer that he/she shall proceed to sell the lands and tenements of such taxpayer for the payment of the tax. The Town Manager shall exhibit the return registry receipt to the Superior Court by filing the same with the petition; provided, however, that if the taxpayer cannot be found, or if delivery is refused, it shall be sufficient for the Town Manager to file with said petition evidence that such statement has been mailed in accordance with this subsection and has been returned.
- 12.3.3 Upon the filing of the petition, the prothonotary shall record the same in a properly indexed record of the Superior Court of the State of Delaware, in and for Sussex County, and shall endorse upon the said record of said petition the following:
- This petition, filed the        day of        A.D. (giving year and date) and the Town Manager is hereby authorized to proceed to sell the lands and tenements herein mentioned or a sufficient part thereof as may be necessary for the payment of the delinquent amount. This endorsement shall be signed by the prothonotary.
- 12.3.4 Any sale of lands and tenements of a delinquent taxpayer shall be advertised in five (5) public places in the Town, one (1) of which shall be on the premises to be sold and by printing the notice of said sale at least one (1) time in a newspaper of general circulation in the Town. Such public notice shall be in bold print or bordered in black, in such manner as to call attention thereto, and shall contain the day, hour, place of sale and a short description of the premises sufficient to identify the same. The handbills shall be posted at least fifteen (15) days before the day of the sale.
- 12.3.5 Each sale of lands and tenements shall be returned to the Superior Court of the State of Delaware, in and for Sussex County, at the next Motion Day thereof following the sale, and the Court shall inquire into the

circumstances and either approve or set aside the sale. If the sale be set aside, the said Superior Court may order another sale until the tax be collected. No sale shall be approved by the Superior Court if the owner or his or her designee be ready at court to pay the taxes, penalty, collection fees, and costs. If the sale be approved, the Town Manager making the sale shall execute a deed to the purchaser which shall convey the right, title and interest of the delinquent taxpayer or his alienee; provided however, that no deed shall be delivered to the purchaser until the expiration of one (1) year from the date of the sale within which time the taxpayer or his alienee, heirs, executors, administrators or assigns, shall have the power to redeem the lands on payment to the purchaser, his personal representatives or assigns of the costs, the amount of the purchase price, plus twenty (20) percent, and the expense of having the deed prepared. All taxes assessed after the sale and before the delivery of the deed shall be paid by the purchaser at said sale who shall be reimbursed by the delinquent taxpayer in the event of redemption to which shall be added twenty (20) percent thereon.

In the event the purchaser refuses to accept the same, or in the event he or she, or his or her heirs or assigns, cannot be located within the State of Delaware, it shall be lawful for the owner, his or her heirs, executors, administrators, and assigns, to pay the redemption money to the Town Manager and upon obtaining from him or her a receipt therefor, such receipt shall be considered a valid and lawful exercise of the power to redeem the said lands.

In the event the lands have not been redeemed within the redemption year, the Town Manager shall deliver to the purchaser, his or her heirs, executors, administrators, or assigns, a deed which shall convey the title of the delinquent taxpayer(s).

The petition, return and deed shall be presumptive evidence of the regularity of the proceeding.

- 12.3.6 After satisfying the taxes or other charge due and the courts costs and expenses of sale from the proceeds of sale, the amount remaining shall be paid to the owner of the land. If he or she shall refuse to accept said remainder, or if the owner be unknown or cannot be found, the amount remaining shall be deposited in a bank either to the credit of the owner or in a manner in which the fund may be identified.
- 12.3.7 In the sale of the lands and tenements for the payment of delinquent taxes, the following costs shall be allowed to be deducted from the proceeds of the sale or chargeable against the owner, as the case may be, in the amount customarily charged:
- (a) to the prothonotary for filing and recording the petition;
  - (b) to the Recorder of Deeds for filing and recording the return of sale; and
  - (c) to the Town Manager for: (1) preparing the certificate, (2) making the sale of lands and tenements, (3) preparing and filing a return, and (4) posting sale bills; and
  - (d) attorneys' fees.
- In addition, the costs of printing handbills, the publication of the advertisement of sale in a newspaper, and the auctioneer's fee, if any, shall be chargeable as costs. The costs of the deed shall not be chargeable as costs, but shall be paid by the purchaser of the property of the delinquent taxpayer. The total of any Delaware transfer tax shall be paid by the purchaser of said lands and tenements at the tax sale.
- 12.3.8 If the owner of any lands and tenements against which a tax or other charge shall be levied and assessed shall be unknown, this fact shall be stated in the advertisement of sale and in the petition to the Court.
- 12.3.9 If any person be assessed for several parcels of land and tenements in the same assessment in the Town, the total of said taxes or other charges may be collected from the sale of any part or portion of said lands and tenements.
- 12.3.10 In the event of death, resignation, or removal from office of the Town Manager, before the proceedings for the sale of lands shall have been completed, the successor in office shall succeed to all powers, rights, and duties in respect to said sale. In the event of the death of the purchaser at said sale prior to receiving a deed for the property purchased thereat, the person having right by consent, devise, assignment or otherwise, may file with the Superior Court of the State of Delaware, in and for Sussex County, a petition representing the facts and praying for an order authorizing and requiring the Town Manager to execute and acknowledge a deed conveying to the petitioner the premises so sold, and thereupon the Court may make such order adjudging the conveyance of the premises as shall be according to justice and equity.
- 12.3.11 The Town Manager shall have the same right to require the aid or assistance of any person or persons in the performance of the Manager's duty of sale which the Sheriff of Sussex County now has by law or may hereafter have.

- 12.4 In addition to all of the remedies, methods, and authorities for the collection of taxes, the Tax Collector shall have the same rights in the collection of taxes as the Tax Collector or Receiver of Taxes as Sussex County now has by law or may hereafter have including the monition method for the collection of such taxes.
- 12.5 In the event the Town brings any action at law (including seeking the imposition of a fine or penalty, the establishment of a lien, or the collection of an amount owed to the Town in an action for debt), or in equity, to enforce compliance with any town ordinance, or to correct and abate any nuisance, the Town shall, if it is the prevailing party in such action, be entitled to recover, as part of the judgment, in addition to any other amounts recovered, the Town's court costs (including all filing fees, court reporting charges, and expert witness fees) and its reasonable attorneys fees.

### 13. Borrowing Powers.

- 13.1 Short-Term Borrowing, Voter Approval Not Required. The Town Council shall have the power to borrow money on the full faith and credit of the Town, without approval of the voters and without regard to the provisions of Sec. 13.2 of this Charter, such principal sum or sums not exceeding in the aggregate twenty percent (20%) of the total amount of the Town's operating revenue for the immediately preceding fiscal year, for general purposes only when, in the opinion of the majority of the Town Council, the needs of the Town require it; provided, however, that any new borrowing under this Section made after the effective date of this Charter shall, by its terms, be repayable in full within five (5) years of the date of each such borrowing. Any sum or sums so borrowed shall be secured by a promissory note or notes or other evidence of indebtedness of the Town Council duly authorized by resolution of the Town Council and signed by the Mayor and attested by the Secretary of the Town with the Town Seal affixed. No Town Council member shall be liable for the payment of any such note or any other evidence of indebtedness because it is signed by such Town Council member, provided that such signature be authorized by the Town Council. Such notes or evidences of indebtedness and the interest thereon shall be exempt from all taxation by the State of Delaware, its agencies and political subdivisions. Any sum(s) of money borrowed on the full faith and credit of the Town shall be repaid from the general fund of the Town. At no time shall the amount of outstanding principal from any such borrowing or borrowings under this Section exceed the sum of twenty percent (20%) of the total amount of the Town's operating revenue for the immediately preceding fiscal year. 78 Del. Laws, c. 324, § 4;
- 13.2 Long-Term Borrowing, Voter Approval Required. In addition to other borrowing powers granted to the Town under this Charter or by State law, the Town Council shall have authority to borrow money for any proper municipal purpose through the issuance of bonds or other evidence of indebtedness to secure the repayment thereof, on the full faith and credit of the Town, or such other security or securities as the Town Council shall elect, for the payment of principal thereof and interest due thereon.
- 13.2.1 Proper Municipal Purpose. By way of illustration and not in limitation, "any proper municipal purpose" includes, but is not limited to:
- (a) refunding any or all outstanding bonds or other indebtedness of the Town at the maturity thereof or in accordance with any callable feature or provision contained therein;
  - (b) erecting, extending, enlarging, maintaining or repairing any plant, building machinery or equipment for the manufacture, supplying or distribution of water, sewerage or drainage system, or any of them, and the condemning or purchasing of any lands, easements, and rights-of-way which may be required therefor;
  - (c) constructing, paving, laying out, widening, extending, repairing, and maintaining of streets, curbing and gutters, including storm sewers along the same and the condemning or purchasing of lands, easements or rights-of-way which may be required therefor;
  - (d) constructing, laying out, widening, extending, repairing and maintaining piers, bulkheads, cross walks, embankments, beach nourishment, revetments, groins or dunes or any of them, and the condemning or purchasing of any lands, easements, or rights-of-way which may be required therefor;
  - (e) defraying the costs to the Town of any other municipal improvement provided for or authorized or implied by the provisions of this Charter; and
  - (f) paying all expenses deemed necessary by the Town Council for the issuance of said bonds or other evidence of indebtedness, including bond discount and legal expenses of bond counsel.
- 13.2.2 Exempt from Taxation. All bonds or other evidences of indebtedness issued by the Town pursuant to the provisions of this Section, and the interest thereon, shall be exempt from all state, county, or municipal taxes.

13.2.3 Limit of Aggregate Long-Term Indebtedness. In no event shall the indebtedness of the Town, authorized by this Section, at any one time exceed, in the aggregate, five (5) percent of the appraised value of all real property within the corporate limits of the Town and subject to assessment for the purpose of levying the annual taxes as provided in this Charter.

13.2.4 Procedure; Notice, Hearing, Special Election. In order to proceed under the power granted in this Section, the Town Council shall authorize such borrowing in the following manner:

(a) The Town Council, by resolution, shall give notice to the voters of the Town that the Town Council proposes to borrow a certain sum of money for a stated municipal purpose. The Town Council shall state the amount of money desired to be borrowed, which may be stated as a "not to exceed" amount, the purpose for which it is desired, the manner of securing the same, and all other pertinent facts relating to the loan which are deemed pertinent by the Council and in its possession at the time of the passage of the resolution and shall fix a time and place for a public hearing on the said resolution.

(b) Notice of the time and place of the public hearing on the resolution authorizing said loan shall be published at least once in at least two (2) newspapers having a general circulation in the Town not less than thirty (30) days nor more than forty-five (45) days prior to the day set for the public hearing. In addition to such publication, the Town Council shall cause to be posted, in at least five (5) public places in the Town of South Bethany, not less than thirty (30) days and not more than forty-five (45) days prior to the day set for the public hearing and notices concerning such public hearing; such public notice shall be in bold print or bordered in black, in such manner as to call attention thereto, and shall contain the purpose for which the loan is desired and the manner of securing the same, plus all other pertinent facts relating to the loan. The last date of publication or posting shall control.

(c) If at any time following the public hearing, the Town Council determines to proceed with the proposed borrowing it shall pass a second resolution ordering a special election, to be held not less than thirty (30) nor more than sixty (60) days after the said public hearing, to borrow the said money. The said special election shall be for the purpose of voting for or against the proposed loan. The passage of the second resolution calling a special election shall be considered the determination of the Town Council to proceed with the matter in issue.

(d) The notice of the time and place of holding such special election shall be printed in two (2) consecutive issues of two (2) newspapers having general circulation in the Town not less than thirty (30) days nor more than forty-five (45) days prior to the special election; such public notice shall be in bold print or bordered in black, in such manner as to call attention thereto and the last date of publication or posting shall control; in addition to such publication, the Town Council shall cause to be posted in at least five (5) public places in the Town not less than thirty (30) days and not more than forty-five (45) days prior to the special election, public notices concerning the special election; in addition to the time and place of the special election, such notices shall contain the same information as required under Sec. 13.2.4(a) above;

(e) At such special election, any person who is entitled to vote in the annual municipal election, if it were held on that day, shall be entitled to one (1) vote. (For purposes of this Section, "entitled to vote" shall include "registered to vote" if voter registration is required for the annual municipal election); any special election held pursuant to the provisions of this Section shall be conducted by voting machines, electronic voting systems or printed ballots as permitted by law which shall have the following designation:

( ) For the proposed borrowing

( ) Against the proposed borrowing

The Mayor, by and with the advice and consent of the majority of the Town Council, shall appoint three (3) persons to act as a Board of Special Election. The polling place shall be opened for a minimum of six (6) hours, as specified by resolution of the Town Council. Persons in the polling place at the time scheduled for closing of the polls shall be entitled to vote;

(f) The Board of Special Election shall be the sole and final judge of the legality of the votes offered at such special election. It shall keep a true and accurate list of all persons voting. It shall count the votes for and against the proposed borrowing and shall announce the result thereof. The Board of Special Election shall execute a certificate of the number of votes cast for and against the proposed borrowing and the number of void votes and shall deliver the same to the Town Office.

- (g) If a majority of the votes cast at such special election shall be in favor of such borrowing, the Town Council shall proceed with the issuance of the said bonds or evidences of indebtedness.
- 13.2.5 Form of Bonds. The form of the bonds or evidences of indebtedness, attached coupons, if any, the time or times of payment, the interest rate, the classes, the series, the maturity date, the registration and any callable or redeemable feature, the denomination, the name thereof and any other relative or appurtenant matter pertaining thereto shall all be determined by the Town Council after said special election.
- 13.2.6 Public or Private Sale. Bonds may be sold at either public or private sale. If the bonds shall be offered for public sale, they shall be sold to the best and most responsible bidder(s) therefor after advertisement in a manner to be prescribed by the Town Council for at least one (1) month before offering the same for sale.
- 13.2.7 Provision for Payment: Special Tax, Sinking Fund. The Town Council shall provide for the payment of interest and principal on the said bonds or evidences of indebtedness at the maturity thereof. The Council is authorized and empowered, at its discretion, to levy a special tax upon all the real estate within the Town, or only upon such real estate as is directly benefitted by the improvements paid for by the proceeds of such borrowing, to pay interest and/or principal; and at its discretion, to establish a sinking fund adequate to the redemption, at or before maturity, of all bonds or evidences of indebtedness which may be issued under the provisions of this Section; provided, that the amount to be raised under any special tax for this purpose shall not, in any one (1) year, exceed a sum equal to five (5) percent of the total of such indebtedness. The special tax provided for in this Section shall be collected from the owners of real estate in the same manner as other taxes levied by the Town Council are collected. The Town Council may also appropriate and set aside for such sinking fund as much of the general fund of said Town as it may from time to time think advisable. The sinking fund provided for by this Section shall be deposited in federally insured accounts in a bank, trust company, or other banking institution until such time as it may be needed for the redemption of the bonds.
- 13.2.8 Full Faith and Credit Unless Otherwise Stated. Unless any such bond(s) or evidence(s) of indebtedness shall provide otherwise, the full faith and credit of the Town shall be deemed to be pledged for the due payment thereof and the interest thereon issued under the provisions of this Section when the same shall have been properly executed and delivered for value, notwithstanding any other provisions of this Charter.
- 13.2.9 Statute of Limitations. No action contesting any proceeding conducted or action taken by the Town Council hereunder regarding the authorization of any bond(s) or evidence(s) of indebtedness issued under this Section shall be brought after the expiration of sixty (60) days from the date of a notice published at least once in at least two (2) newspapers, one (1) of which shall be of general circulation in the Town and one (1) of which shall be of general circulation in the State of Delaware, which notice shall announce the following information:
- (a) that the Town Council has determined to borrow a certain sum of money and to issue bonds or evidences of indebtedness therefor;
  - (b) that the proposal has been approved by a majority of those casting votes at a special election in the Town called for the purpose of voting for or against the borrowing;
  - (c) the amount of money to be borrowed;
  - (d) the purpose for which it is to be borrowed; and
  - (e) that any person desiring to challenge the authorization of such bond(s) or evidence(s) of indebtedness must bring his or her action within sixty (60) days from the date of publication of such notice or forever be barred from doing so. In the event that the two (2) newspapers do not publish the notice on the same date, the date of the last publication shall control. Such notice shall be in bold print or bordered in black in such manner as to call attention thereto.

#### **14. Use of Town Monies.**

The Town Council shall have full power and authority to use the money in the Treasury of the Town, or any portion thereof, from time to time, for the improvement, benefit, protection, ornamentation, and best interest of the Town, as the Council may deem proper, and to use Town money to accomplish and carry into effect all acts and things which it has power to do by virtue of the Laws of the State of Delaware, this Charter and all ordinances and resolutions enacted by Town Council. 78 Del. Laws, c. 324, § 5

#### **15. Annual Audit.**



The Town Council shall retain a certified public accountant to be the Auditor of Accounts of the Town. It shall be the duty of the Auditor to audit the accounts of the Town and all its officers whose duties involve the collection, custody, or disbursement of Town monies. The Auditor shall audit the books of the Alderman and the Assistant Alderman and the records of all fines, penalties, costs imposed or collected by them pursuant to any judgment, order or decree made. The Auditor shall, on or before expiration of one hundred twenty (120) days after the end of each fiscal year, make and deliver a detailed report of all accounts, records, and books examined and audited by such Auditor which report shall be available for public inspection. Notice of the filing of the Auditor's report shall be published at least once in a newspaper of general circulation in the Town within thirty (30) days of its receipt by the Town Council. The Auditor, in the performance of official duties, shall have access to all records and accounts of the Town.

#### **16. Alderman's Court.**

- 16.1 Establishment and Appointment. The Town Council may establish an Alderman's Court and may appoint a suitable person to serve as Alderman who shall serve for a term of two (2) years, or for a lesser term as determined by Town Council, or until a successor is duly appointed, subject, however, to being removed from office for just cause at any time by majority vote of the Town Council. The Town Council may, in addition, appoint an Assistant Alderman subject to the same conditions.
- 16.2 Qualifications. Any person appointed to serve as Alderman or Assistant Alderman shall be at least twenty-five (25) years of age, a United States citizen of good character and reputation, and shall reside in Delaware no farther than fifteen (15) miles from the corporate limits of the Town. Such person shall not be a member of the Town Council, an officer, or an employee of the Town.
- 16.3 Oath of Office. Before entering upon the duties of such office, the persons appointed to serve as Alderman and Assistant Alderman shall be sworn or affirmed by the Mayor to perform the duties of such office honestly, faithfully and diligently.
- 16.4 Duties. It shall be the duty of the Alderman and Assistant Alderman to render judgements on charges of breaches of the peace, offenses and violations of the Town Charter, Town ordinances, and the Constitution and Laws of the United States and the State of Delaware, and impose penalties in accordance with existing law.
- 16.5 Jurisdiction. The Alderman and Assistant Alderman shall have jurisdiction and cognizance of all such breaches of the peace, offenses and violations committed within the corporate limits of the Town, provided that they shall have no jurisdiction over any dispute between or among private parties. The Alderman and Assistant Alderman shall be authorized and empowered to, hold for bail, set bail, impose fines or imprison offenders for any such breach of the peace, offense or violation in accordance with appropriate penalties, provided, however, that the maximum penalty which the Alderman or Assistant Alderman may impose shall not exceed the limits established by the Town Charter, Town ordinances, and the Laws of the State of Delaware. The Delaware Correctional Institution, in Georgetown, Delaware, may be used for imprisonment under this Charter.  
Neither the Alderman nor the Assistant Alderman shall be authorized to impose any fine in excess of five hundred dollars (\$500.00), exclusive of costs, nor imprisonment for more than thirty (30) days, or both.
- 16.6 Costs. The Alderman and Assistant Alderman may, in addition to any fine or term of imprisonment permitted to be imposed, assess and collect such costs as are set by an ordinance enacted by the Town Council, provided that no such costs may be imposed which are in excess of those which may be imposed by a Justice of the Peace for like service.
- 16.7 Alderman's Docket. Appropriate enforcement records shall be provided for the use of the Alderman and the Assistant Alderman. Such records shall be known as the "Alderman's Docket". The Alderman and Assistant Alderman shall record all official acts and proceedings in the Alderman's Docket.
- 16.8 Monthly Report to Town Council. The Alderman and Assistant Alderman shall prepare and submit a monthly report to the Town Council reporting all fines, penalties, and costs imposed during the preceding calendar month and shall pay to the Town all such fines and costs at such times as the Town Council shall direct. They shall submit periodic reports as required by the State of Delaware.
- 16.9 Compensation. The Alderman and Assistant Alderman shall receive such compensation as may be fixed from time to time by action of the Town Council, which compensation shall not be contingent upon or related to the amount of any fines imposed or collected.
- 16.10 Bonding. The Alderman and Assistant Alderman shall be bonded by a company duly authorized to do business in the State of Delaware in such amount as determined by the Town Council. The cost of said bond shall be paid out of Town funds.

16.11 Removal from Office. If any Alderman or Assistant Alderman shall be removed from office as hereinbefore provided, he or she shall deliver to the Mayor within five (5) days after removal from office, all the books and papers belonging to the office, and shall pay over to the Town all funds on hand within five (5) days after reviewing the notice of such removal from office. The Mayor shall require an immediate audit to be made of the books and papers of the official so removed from office. Upon the neglect or failure to deliver all the books and papers to the Mayor within the time specified by this Charter, or to pay over all of the moneys to the Town within the time specified, the Alderman or Assistant Alderman, so removed, shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each day of such delinquent behavior.

## 17. Police and Public Safety.

17.1 Appointment of Chief of Police and Other Police Department Personnel. The Town Council shall establish a Police Department consisting of a Chief of Police and such police officers and subordinates as the Town Council shall determine. The Town Council shall from time to time make such administrative rules and regulations as may be necessary for the staffing, organization and operation of the Police Department. The Chief of Police shall be appointed by the Mayor subject to ratification by the Town Council and shall serve at the pleasure of the Town Council.

17.2 Police Department Administration. Subject to the supervision of the Town Manager, the Chief of Police shall be responsible for the operational control, management, and administration of the Police Department. 81 Del. Laws, c. 259, § 2;

17.3 Police Department Duties and Functions. Each member of the Police Department shall have all the police powers and authority of a State Police Officer and shall be a conservator of the peace throughout the Town, and shall suppress all acts of violence and enforce all laws relating to the safety of persons and property. Such member shall, within the corporate limits of the Town of South Bethany, compel the enforcement of all ordinances enacted by the Town Council of the Town of South Bethany and all criminal laws and motor vehicle laws enacted by the State of Delaware. In the case of a pursuit of an offender, the power and authority of the Police Department shall extend outside the corporate limits of the Town of South Bethany to any part of the State of Delaware. It shall be the duty of the Police Department to suppress riotous, disorderly, or turbulent assemblies of persons in all public places of the Town, and upon view of the above or upon view of any violation of any ordinance of the Town relating to the peace and good order thereof, the Police Department shall have the right and power to arrest without warrant.

17.4 Beach Patrol. There shall be a Beach Patrol, the number of which shall be determined by the Town Council. The Town Council shall have the power to establish administrative rules and regulations governing the qualifications of members of the Beach Patrol; provided, however, that each member of the Beach Patrol shall pass a test substantially equal to the test required of a senior lifesaver by the American Red Cross. The primary responsibility of the Beach Patrol shall be the preservation of human life on and adjacent to all beaches of the Town. In addition, the Beach Patrol shall have such other related duties as the Town Manager may prescribe. 81 Del. Laws, c. 259, § 3;

## 18. Subdivision and Land Development.

18.1 Power to Regulate. In order to provide for the orderly growth and development of the Town, to promote the health, safety, prosperity, and general welfare of the present and future inhabitants and property owners of the Town, to insure the conservation of property values and natural resources, including the protection and beauty of the Town's open lands, water resources, beaches, and recreation potential, to preserve the character of the Town as a single-family detached home community, and to afford adequate provisions for public utilities, water supply, drainage, sanitation, vehicular access, educational and recreational facilities, parkland and open space, among other and related activities, the Town shall regulate the subdivision of all land in the Town. Such regulation may, through ordinance, I

18.1.1 Varying procedures to insure the processing of plans to combine, partition, or subdivide or develop land, within a reasonable period of time, relative to the number of lots or parcels and/or relative to the extent of improvements required.

18.1.2 Procedures for insuring that the arrangement of the lots or parcels of land or improvements thereon shall conform to the existing zoning at the time of recordation and that streets or rights-of-way, bordering on or within subdivided or developed land shall be of such widths and grades and in such locations as may be deemed necessary to accommodate prospective traffic and interconnection with other public streets and highways, that adequate easements or rights-of-way shall be provided for drainage and utilities, that

reservations of areas designed for use as public grounds shall be of suitable size and location for their designated uses, that sufficient and suitable monuments and signage shall be required, that land which might constitute a menace to safety, health or the general welfare shall be made safe for the purpose for which it is subdivided, and that adequate provision is made for water supply, fire protection, sanitary sewage, drainage, and other utilities is made.

- 18.1.3 Procedures to encourage and promote flexibility and ingenuity in the layout and design of subdivisions and land development, and to encourage practices which are in accordance with contemporary and evolving principles of site planning and development.
- 18.1.4 Requiring, through dedication of land, and/or improvements, money in lieu of land and/or improvements (including enlargement, expansion, improvement, or enhancement of existing municipal or public improvements) either on-site within the proposed subdivision or off-site and outside the proposed subdivision, which have a rational nexus to the proposed land subdivision, combining, or partitioning, or developing including, by way of example and not in limitation, the paving and/or widening of streets, installation of sidewalks, curbs, storm sewers, water lines, sanitary sewer lines, electric distribution lines, street signs, traffic signals, access roads, traffic lanes for turning, acceleration, and deceleration, playgrounds, parks, and open areas. In imposing such requirements, the Town may consider and take into account future as well as immediate needs, and potential as well as present population factors affecting the neighborhood in question.
- 18.1.5 Procedures to insure that any improvements to be constructed on such lands are in compliance with all appropriate Town ordinances and that the placement and location of such improvements will not have a significant negative impact on adjoining properties.
- 18.1.6 Procedures to secure financial guarantees from the developers of such lands to insure satisfactory completion of all such required improvements, which may include extending the term of such guarantee for a reasonable period of time (not exceeding three years) beyond the actual completion of such improvements by the developer or acceptance of such improvements by the Town.
- 18.2 Recording Unapproved Plans. In the event an ordinance of the Town so provides, no plat, plot, or plan of land shall be received for filing or recording by the Recorder of Deeds in and for Sussex County unless and until such plat, plot, or plan shall have been approved by the Town body so authorized to grant such approvals and the fact of such approval shall have been endorsed in writing upon such plan. If such ordinance so provides, any plat, plot, or plan recorded without approval in writing from the Town body so authorized to grant such approval shall be voidable by any court of competent jurisdiction.

## 19. Streets.

- 19.1 "Street" Defined. For all purposes of this Section, the word "street" shall be deemed to include streets, roadways, lanes, guttering, curbing, crosswalks and parking areas but shall not include any state or federal highways.
- 19.2 Power to Lay Out, Locate, Construct, Open, Close, Vacate or Abandon. The Town Council shall have the power and authority to lay out, locate, construct, open, close, vacate or abandon any street within the Town corporate limits.
- 19.3 Initiation of Proceedings. The procedures for taking the action described in Sub-section 19.2 shall be established by ordinance of the Town Council.
- 19.4 Notice of Hearing. Such procedures shall require a notice of hearing that contains a description of the proposed action and fixes a date, time and place when the Town Council shall hold a hearing to hear comments and objections concerning the proposal. Such notice of hearing shall be in bold print or bordered in black, in such manner as to call attention thereto. At least thirty (30) days before the date set for such hearing, the notice of hearing shall be printed in a newspaper having a general circulation in the Town and shall be posted in five (5) public places in the Town.
- 19.5 Notice to Affected Property Owners. The Town Council shall cause to be sent by certified mail, return receipt requested, to the owner(s) of record of the real estate abutting such street. If the address of the owner be unknown, a copy shall be delivered to any persons occupying the premises, or, if none, posted thereon. Notice to affected property owners under this Sub-section shall be provided at least thirty (30) days before the date set for the hearing.
- 19.6 Hearing. At the time and place specified, the Town Council shall permit such residents of the Town or owners of properties affected thereby, to present oral or written comments. After receiving all comments, the Town Council shall, at said hearing, or at a subsequent date, as it may deem proper, adopt a resolution to proceed

with the proposed laying out, locating, constructing, widening, altering, opening, closing, vacating or abandoning of any street(s) or parts hereof.

- 19.7 Payment of Compensation. In every case where the Town Council shall resolve to proceed with the plan contemplated, or a portion thereof, the Town Council shall award just and reasonable compensation to any person or persons who will thereby be deprived of property by virtue of the execution of the plan so contemplated. Such compensation, if any be awarded, shall be paid by the Treasurer of the Town on a warrant drawn upon him by authority of the Town Council upon delivery of a good and sufficient deed conveying a fee simple title unto the "Town of South Bethany"; which title shall be free and clear of all liens and encumbrances. Notice of compensation shall be given to affected property owners as provided in Sub-section 19.4.
- 19.8 Property Owner Right of Appeal. If the owner of the affected property be dissatisfied with the amount of compensation allowed by the Town, said property owner may, within thirty (30) days after such notice was mailed, delivered, or posted on the property, appeal from the written notice of award of compensation such written appeal shall be deposited in the United States mail, by certified mail with return receipt requested and postage prepaid, to the Mayor of the Town, to the effect that such owner is dissatisfied with the amount of such compensation, and that it is the owner's intention to require the Town to condemn such property, or any compensable interest therein, in accordance with Section 23 of this Charter and 10 Del. C. Chapter 61, or any future corresponding provisions of law. In such event, the Town shall proceed in accordance with Section 23 of this Charter and 10 Del. C. Chapter 61, or any future corresponding provisions of law, to condemn such property, or any interest therein, for the purposes herein stated.
- 19.9 Disposal of Abandoned and Vacated Streets. Whenever any street or part thereof vacated or abandoned under this Section be owned by the Town, the Town Council may, in its discretion, sell such land at public or private sale and for such consideration as the Town Council shall deem proper. The Town Council shall have the right and power to convey to the purchaser or purchasers thereof, a good and sufficient title thereto for whatever estate the Town may have therein.
- 19.10 Maintaining and Repairing of Streets. The Town Council shall have full power and authority (1) to regrade, redress and otherwise repair and rebuild all existing streets in the Town; and (2) to reconstruct, rebuild, repave and in any manner improve all existing streets now open or to be hereafter opened for public use in the Town.
- 19.11 Construction Supervision, Standards. The Town Council, in exercising the authority granted by this Section, may use such materials and substances and such methods of construction and may employ such contractors, engineers, inspectors and other persons as the Town Council may deem necessary. To this end, the Town Council shall have full power and authority to enter into contracts or agreements with the State Highway Department of the State of Delaware for the permanent maintenance and repair of any street within the corporate limits of the Town.

## **20. Water Systems.**

The Town Council shall have full power and authority to provide an adequate supply of potable water for the Town and the inhabitants thereof. To this end, it shall have full power and authority to purchase, acquire by grant or gift, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace and control wells, reservoirs, pumping machines and stations, tanks, standpipes, water mains, fire hydrants and all other instruments for the collection, storage, purification, conveyance and distribution of water, over, on, under or through the lands owned by the Town or belonging to any private individual(s).

The Town Council shall have power to enact ordinances, resolutions, regulations and rules in regard to the use for public or private purposes of water furnished by the Town; the amounts to be paid by the users thereof; the means or methods whereby the same amounts are to be paid by the users thereof; the means or methods whereby the same shall be collected; the fixing of fines, or penalties, or both, for any willful or negligent injury or damage to or interference with any water system facilities, equipment, or services of the Town.

The Town Council shall have the power to make contracts for the purchase or sale of water and to distribute the same to users within or without the corporate limits of the Town.

The Town Council shall have the power to enter into contracts for the sale of water outside the corporate limits of the Town upon such terms and conditions as the Town Council shall deem necessary; and also to enter into mutual aid agreements with other water suppliers conducting operations near the boundaries of the Town upon such terms and conditions as Town Council shall deem appropriate.

The Town Council shall have the power to grant franchises for an appropriate term of years to use the present or future streets and beach strands of the Town for the purpose of furnishing water to the Town and the inhabitants thereof.

Properties may be compelled to connect to a Town water system based on a determination by a Town referendum, except in an emergency condition in which the Town Council must decide so as to protect the public's health and welfare. 71 Del. Laws, c. 338

**21. Water Structures.**

The Town Council shall have the power and authority to lay out, locate, construct, widen, alter, extend, improve, repair, vacate or abandon structures including, but not limited to, bulkheads, groins, revetments and embankments for the preservation of any beach, strand or waterway within the corporate limits of the Town. In the exercise of such power and authority, such materials and substances and such methods of construction shall be used, and such contractors, engineers, inspectors and other persons shall be employed as the Town Council shall deem necessary, subject to any controlling Federal or State law. In addition, the Town Council may require such actions to be taken.

**22. Referendum.**

22.1 Referendum Power. The qualified voters of the Town shall have the right of referendum, and may exercise such right in order to approve or reject, at an election provided for herein, any ordinance, regulation, resolution, or rule promulgated by the Town Council in accord with the provisions of this Charter; provided, however, that such power of referendum shall not extend to any emergency ordinance, to any ordinance authorizing the borrowing of money under Sec. 13.2 ("Long-Term Borrowing"), to any ordinance annexing lands to the Town, to the adoption of an annual balanced operating budget to any ordinance relating to the appropriation of money, to any ordinance relating to the levy of taxes or to any ordinance otherwise subject to Special Election procedures provided under this Charter.

22.2 Petition for Referendum. In order to initiate a referendum under this Section, a referendum petition shall be presented to the Town Manager or the Town Council, signed by qualified voters, qualified as of the date of such presentation, equal in number to not less than twenty-five (25) percent of the total number of persons who voted in the most recent annual municipal election. Each copy of such petition shall contain the South Bethany address of each of the signers and shall have attached thereto, the full text of the ordinance, regulation, or rule proposed for reconsideration. The Town shall supply up to five (5) copies of the measure for attachment to the petition(s), and all additional copies shall be furnished by the petitioners. Each signature on a petition shall be executed in ink or indelible pencil.

Each copy of the petition presented to the Town Council shall have attached thereto an affidavit executed by the person circulating such petition, stating that he/she personally circulated the petition and stating further the number of signatures thereon and that such signatures are the genuine signatures of the persons who signed, and that each signer had an opportunity, before signing, to read the full text of the ordinance, regulation, resolution, or rule proposed for consideration.

22.3 Determination of Sufficiency of Petition. The Town Council shall examine any petition filed under this Section in order to determine whether or not the petition contains the required number of signatures and whether or not each signer is a qualified voter of the Town. If the petition is found to have an insufficient number of valid signatures, it shall be rejected by the Town Council. Such insufficiency may be "cured" by the addition of signatures of qualified voters and re-submitted within sixty (60) days from the date of rejection by the Town Council.

22.4 Appeal of Council Decision. Any person or persons aggrieved by the rejection by the Town Council may present to the Superior Court of the State of Delaware for Sussex County, an appeal petition duly verified, setting forth that such rejection is invalid, in whole or in part, specifying the grounds of such invalidity. Such petition shall be presented to the Court within thirty (30) days following the determination by the Town Council as to the insufficiency of the referendum petition. Upon presentation of the appeal petition, the Court may direct the Town Council to reconsider its decision and shall prescribe the time within which a response to the Court must be made and also served upon the petitioner or his attorney. Such time shall not be less than ten (10) days and may be extended by the Court. The Court may reverse or affirm, wholly or in part, or may modify the Council's determination brought up for review.

22.5 Reconsideration Upon Receipt of Petition. Upon a determination that the referendum petition is sufficient, either by the Town Council or by the Superior Court on appeal, the Town Council shall reconsider the referred ordinance, regulation, resolution, or rule at its next regular meeting following such determination. If the Town Council fails to adopt, amend, or repeal such ordinance, regulation, resolution, or rule, it shall be submitted to the qualified voters for a referendum as hereinafter provided.

22.6 Voting Procedure. The referendum on a referred ordinance, regulation, resolution, or rule shall be held not less than sixty (60) days nor more than (90) days from the date on which the Town Council failed to adopt, amend, or repeal such measure. If the annual municipal election is to be held within ninety (90) days from such date, the referendum prescribed in Sub-sec. 22.5 shall be held at that time. If the annual municipal election is not to be held within ninety (90) days from such date, the Town Council shall specify the date for the referendum. If the Town Council fails to hold a referendum within the time specified in this Section, the measure under review shall be deemed to be adopted, amended, or repealed at the expiration of the ninety (90) day period. The referendum shall be conducted in accordance with the following procedure:

- (a) At any referendum conducted under this Section, a qualified voter shall be any person who would be entitled to vote in the annual municipal election if it were held on that day. Each qualified voter shall be entitled to one (1) vote.
- (b) Notice of the time and place of holding the said referendum shall be communicated to all property owners of the Town by publishing at least once in at least two (2) newspapers having a general circulation in the Town not less than thirty (30) days immediately preceding the date of the referendum. Such notice shall also be posted in five (5) public places in the Town, not less than thirty (30) days immediately preceding the date of referendum. In the event that such publications and posting do not appear on the same date, the date of the last publication or posting shall control. Such notice shall be in bold print or bordered in black in such manner as to call attention thereto. The Mayor shall appoint three (3) persons to act as Board of Special Election if the referendum is required. The polling place shall be open for a minimum amount of six (6) consecutive hours, the times shall be set by resolution of the Town Council. Persons in the polling place at the time set for the closing of the polls shall be entitled to vote even though such votes may be cast after the time set for the closing of the polls.
- (c) Immediately after the closing of the polls, the Board of Special Election, or the Board of Election if the referendum is held on the day of the annual municipal election, shall count the ballots for and against the proposition as presented, and shall announce the results thereof. Such Board shall certify the number of votes cast for and against the proposed ordinance and the number of void votes, and shall report the same to the Town Council. Such certification shall be filed with the official records of the Town.
- (d) The form of the ballot of the referendum whether held on the day of the annual municipal election or at a special election, shall be as follows:
  - ( ) For the Referendum: (I vote for [e.g. repealing Ordinance No. 1234])
  - ( ) Against the Referendum: (I vote against [e.g. repealing Ordinance 1234])

The wording in the brackets should reflect exactly what the vote for or against will do. 75 Del. Laws, c. 173
- (e) If the majority of the qualified voters voting on a referred measure vote in favor of such measure, it shall be considered adopted, amended, or repealed upon the certification of the result of the referendum by the Board of Special Election or by the Board of Election as the case may be. No ordinance, regulation, resolution, or rule which has been adopted, amended, or repealed as the result of the procedures of Sec. 22 shall be adopted in the same or similar form by the Town Council until the expiration of two years from that date of the referendum election. 75 Del. Laws, c. 173

22.7 Non-Binding Referendum. The Town Council may, on its own initiative, by resolution, determine to hold a non-binding referendum to obtain the opinion of the qualified voters of the Town on any subject which the Council has under consideration.

Any such referendum shall be conducted in such manner and with such public notice, as the Town Council shall determine by resolution provided, however, that any such resolution, and any public notice regarding such non-binding referendum shall clearly specify that such referendum is non-binding. The results of any non-binding referendum conducted under this Section shall not bind or obligate the Town Council to take any action or refrain from taking any action on the subject referred, but shall be informational in nature regarding the opinion of those qualified voters who voted in such election.

### 23. Eminent Domain.

The Town Council may, by condemnation proceedings, take private property or may exercise the right to use private property within the corporate limits of the Town for any of the purposes authorized by this Charter. The proceedings for such condemnation shall be as prescribed in 10 Del. C. Chapter 61 or any future corresponding provision of law. The right of condemnation shall not extend to property owned by the United States, the State of Delaware or any agency thereof.

**24. Limitation on Liability.**

No claim or cause of action shall arise, and no judgment, damages, penalties, costs or other money entitlement shall be awarded or assessed against the Town, any board, commission or agency of the Town, or any Town public officer, employee or member of such Town instrumentalities, whether elected or appointed, and whether now or previously serving as such, in any civil suit, or before any administrative tribunal on any and all tort claims seeking recovery of damages, unless made pursuant to Sub-chapter II, entitled "County and Municipal Tort Claims", consisting of Sections 4010-4013, Title 10 of the Delaware Code or its successor.

**25. Indemnification.**

The Town shall indemnify, from the general fund of the Town's treasury, to the extent not otherwise covered by appropriate insurance, any person who is a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Town itself) by reason of the fact that he or she is or was a member of the Town Council, Mayor or other duly elected or appointed Town Official or employee of the Town, or arising out of actions taken by each or any of them in connection with the performance of their official duties, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the Town, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Town and with respect to any criminal action or proceeding had reasonable cause to believe that his or her conduct was unlawful; provided, however, that in the event of a monetary settlement, the Town Council shall first approve the amount and terms of the settlement before the right to indemnification shall vest.

Indemnification as provided in this Section shall be made by the Town only as authorized in the specific case upon a determination that indemnification of the members of the Town Council, Mayor, Town Officers and/or employee is proper in the circumstances because he or she met the applicable standards of the conduct set forth above. Such determination shall be made:

- (a) by a majority vote of the Town Council consisting of Council members who are not parties to such action, suit or proceeding, or
- (b) if a quorum is not obtained, by independent legal counsel in a written opinion.

**26. Compendium.**

It shall be the duty of the Town Council to compile and reproduce the minutes of official meetings as well as ordinances, regulations, resolutions, rules or other decisions adopted by Town governmental bodies. The Town shall have a reasonable number of copies printed for the use of the officials of the Town and for public information. Copies of such documents shall be made available to private persons at a reasonable cost. At least two (2) copies of the Charter which shall have incorporated within it all amendments enacted by the General Assembly shall be kept at the Town office. Such copies may be typed, written, photographically processed or a combination of both. The Town Office shall make such further copies of the Charter, from time to time, as may be necessary. Copies of the Town Charter shall be available at the Town Office for public review.

**27. Survival of Powers and Validating Section.**

- 27.1 All powers conferred upon or vested in the Town Council by any act or law of the State of Delaware not in conflict with the provisions of this Charter are hereby expressly conferred upon and vested in the Town and/or the Town Council precisely as if each of said powers was expressly set forth in this Charter.
- 27.2 All ordinances, regulations, resolutions, and rules adopted by the Town Council and in force on the effective date of this Charter, as amended, are continued in force until repealed, modified or altered by the Town Council under the provisions of this Charter.
- 27.3 All actions of the Town Council or of any Town official taken under the provisions of Delaware law, any Town ordinance, regulation, resolution, or rule or any prior Charter of this Town prior to the effective date of this Charter, as amended, shall continue in effect unless otherwise provided herein.

- 27.4 All taxes, assessments, license fees, penalties, fines, forfeitures and other charges due to the Town, and all debts owed to or by the Town, prior to the effective date of this Charter, as amended, shall remain due and unimpaired.
- 27.5 All powers granted by this Charter in respect to the collection of taxes, license fees, assessments or other charges shall be deemed to apply and extend to all unpaid taxes, license fees, assessments or other charges heretofore lawfully imposed by the Town.
- 27.6 The bonds given by or on account of any official of the Town shall not be impaired or affected by the provisions of this Charter.
- 27.7 Each member of the Town Council who holds office at the time of approval of this Charter, as amended, shall continue to serve until the expiration of such term of office, as prescribed at the time of election or appointment.
- 27.8 All acts or parts of acts inconsistent with or in conflict with the provisions of this Charter shall be and are hereby repealed to the extent of any such inconsistency.

**28. Separability.**

If any section, sub-section, paragraph, sentence, clause or other provision of this Charter shall be held to be unconstitutional or invalid by any court of competent jurisdiction, such holding shall not be deemed to invalidate the remaining sections, sub-sections, paragraphs, sentences, clauses or other provisions of this Charter.

**29. Public Act.**

This Charter shall be deemed to constitute a Public Act of the State of Delaware.

**30. Effective Date. This Charter shall take effect as of the day of enactment.**

Approved June 27, 1994.

69 Del. Laws, c. 268; 71 Del. Laws, c. 338; 72 Del. Laws, c. 354; 74 Del. Laws, c. 218; 75 Del. Laws, c. 173; 78 Del. Laws, c. 324; 78 Del. Laws, c. 324; 80 Del. Laws, c. 100; 81 Del. Laws, c. 259; 83 Del. Laws, c. 43; 83 Del. Laws, c. 314;